Page 1:  
LAW COMMISSION OF INDIA  
  
ONE HUNDRED FIFTY - SIXTH  
  
REPORT  
  
ON  
  
THE INDIAN PENAL CODE  
  
( VOLUME I)  
  
AUGUST, 1997.  
  
  
Page 2:  
bee  
  
CHAIRMAN  
  
JAYACHANDRA REDDY LAW COMMISSION  
  
GOVERNMENT OF INDIA  
‘SHASTRI BHAWAN  
NEW DELAI- 110091  
Tel. Of: 3384475  
  
Res: 301965  
  
.0.N0.6(3) 36)/95-LC(LS) August 3. 1997,  
  
ear Law Minister  
  
T have pleasure in forwarcing herewith the 136th Report on “Indian  
Penal Code™ ‘fais, brings, to's conclusion ane al the maior casks  
assigned to the Law Commission by the Government of India.  
  
code.  
iy  
  
2. Pursuant so the reference made oy the Government of Ind  
Conmission undertook a comprehensive revision of the Indian Pe"  
Sion special reference to tre IPC (Amendment) Bill. 1978. unmesier  
Gitar Toseumed charge on Luly 13, 1993.  
  
2. In order 10 elicit public opinion, te Commission circulates a  
Gerailed questionnaire and Working paper’ setting out various sspects of  
the subject under study The Commission scganised workshaps/seminars  
At chennai, ‘ederabad, Visachepatnam, Panjim. Shumle and Sew Deshi-  
The Commission also examined the provisions af the IPC (Amendment)  
Bill, 1978 while making 1:5. Fecanmendations..  
  
4. te have endeavoured to make the present report a comorshensive  
ee. particularly after a careful scrutiny of all the aravisions of the EPC  
  
Camenoment! Bill, 1978,  
  
5. The recemmendations have been made with & view to plugging the  
Ioepholes and making the provisions of the Code more effective.” We  
hope that the recommendations, if implemented, will mare the code nore  
  
comprehensive  
  
Wich cogards,  
  
y Yours sincerety  
  
« K.Jayathandea Recdy )  
  
Shri Ramakant O-Khalap.  
Hon'ble Minister of State for Law & Just  
Government of india,  
  
Shasiei Bhavan,  
  
New Deni  
  
  
  
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CHAPTER - I  
  
INTRODUCTION  
  
The origin of Crimes and of Criminal Law 14  
  
primitive system, by which all wrongs were redr  
  
c  
  
private revenge; a system of self-redress, based on the  
  
principle of Retaliation. | “A system of self-redress” says  
Mr. Moyle, an eminent scholar, “in the form of private  
vengeance, preceded everywhere the establishment of a regular  
judfeature; the injured person, with his Kinsmen or  
dependents, made a foray against the wrong-doer, and swept  
  
away his cattle, and with them, perhaps, his wife and  
  
children or he threatened him with supernatural penalties by  
“fasting” upon him, as in the East even at the present day;  
  
or finally, he reduced his adversary to servitude, or took  
  
his life. Such savage retaliation did not conetitute law,  
but it was the germ from which the Penal Law gradually  
developed, for the idea of such a procedure was not  
compensation but punishment. This system led naturally to  
terrible anarchy. The offender was often as strong, if not  
  
etronger than his adversary, and the assistance of the  
  
Kinsmen on each side created a blood feud, lasting perhaps  
  
for generations  
  
  
Page 6:  
1.02. Thus, there was no systematic criminal law in  
uncivilized society. Every man was I1able to be attacked in  
his person or property at any time by any one. The person  
attacked either succumbed or overpowered his opponent. “A  
  
tooth for a tooth, an eye for an eye, a life for a life” was  
  
the forerunner of criminal justice, As time advanced, the  
  
injured person agreed to accept compensation, instead of  
  
Killing hie adversary. Subsequently, a sliding scale came  
into existence for satisfying ordinary offences. Such &  
  
system gave birth to archaic criminal law. For @ long time,  
  
the application of these principles remained with the parti  
  
themselves, but gradually this function came to be performed  
  
by the State.  
  
In India anciently, the genesis of criminal  
jurisprudence can be traced to Smrtis but came into existence  
particularly from the time of ‘Manu’. In the category of  
  
‘crimes’, Manu had recognized assault, theft, robbery, false  
  
evidence, slander, criminal breach of trust, cheating,  
Adultery and rape. The king protected his subjects and the  
  
subjects in return owed him allegiance and paid him revenu  
  
The king administered justice himself, and, if busy, the  
matter was entrusted to a Judge. If a criminal was fined,  
the fine went to the king's treasury, and was not given as  
  
compensation to the injured party.  
  
  
Page 7:  
1.03. Vasco Da Gama, a subject of Portugal, first  
  
discovered the passage to India around the Cape of Good Hop  
  
‘the southernmost point of Africa. Briefly stated,  
  
thereafter, the Portugu  
  
began to carry on trade with  
India, and later, the Engliehmen came on the scene and began  
to carry on trade with India. As they were very successful,  
aueen Elizabeth granted, in 1800, Charter which  
incorporated the East India Company. The Charter also gave  
the power to the Company for making laws. In 1609, James 1  
renewed the Charter, and in 1661 Cherles IT again gave  
  
similar powers while renewing it.?  
  
1,04, The Charter of 1668 transferred Bombay to the East  
India Company, and directed that proceedings in the court  
should be 1ike unto those that were established in England.  
  
The Court of Judicature which was established in 1672 sat  
  
once a month for its general s 9 that remained  
  
stone and ca  
  
undisposed of were adjourned to “Petty Sessions” which were  
held after general sessions, This Court inflicted punishment  
  
of Slavery in cases of theft and robbery. In ordinary ca  
  
of theft the offender had to pay monetary compensation, or  
  
else he was forced to work for the owner of the article  
stolen.?  
  
In 1683, Charles II granted a further Charter for  
  
establishing a Court of Judicature at such places as the  
  
Company might decide. In 1887, another Charter was granted  
  
  
Page 8:  
by which a Mayor and Corporation were established at Fort st.  
  
George, Madras, in order to settle emall disputes. By the:  
  
Charters Englishmen who came to India were entrusted with  
administration of justice, both civil as well as criminal.  
In these Courts the powers exercised by the authorities were  
very arbitrary. Strange charges were framed and strange  
  
punishments were inflicted.4  
  
In 1726, the Court of directors made a  
  
repr  
  
ntation to the Crown for proper administration of  
justice in India fn civil and criminal matters. Thereupon,  
  
Mayors’ Courts were  
  
tablished for proper administration of  
  
justice. But the laws admintetered were arbitrary becai  
  
the Mayor and Aldermen were the Company's mercantile  
  
servant:  
  
and they possessed very little legal knowledss  
  
The law that was administered was utterly incapable of  
suiting the social conditions of either the Hindus or the  
Mohammedan:  
  
In 1783, another Charter was passed under which  
  
Mayors were not empowered to try suits between Indians; and  
no person was entitled to sit ae a judge who had an interest  
in the suit. English law was no more applicable to Indians,  
  
and they were  
  
ft to be governed by their own laws and  
customs. In 1765, Robert Clive came to India for the third  
time and succeeded in obtaining the grant of the Dewani from  
the Moghul Emperor, The grant of the Dewani included not  
  
only the holding of Oewani Courts, but the Nizamat also, #  
  
the right of superintending the whole administration in  
  
Bengal, Bihar and Orisca.?  
  
  
  
Page 9:  
In 1772, Warren Hastings took steps for proper  
administration of criminal justice. A Fouzdari Adalat was  
established in each district for the trial of crimina  
  
offences. With these Courts the Company’s European subjects,  
  
had no connection, nor did they interfere with thi  
administration. The Kazi or Mufti eat in these Courts to  
expound the law and determine how far criminals were gui ity  
of the offence charged. The Collector of each district was  
  
ordered to exerci  
  
a general supervision over their work.  
In addition to District Courts a Suddar Nizamat Adalat wa  
‘also established. This Court was to revise and confirm tho  
sentences of Fouzdari Adalat in capital cases and offences  
  
involving fin  
  
exceeding one hundrad rupees. The officers  
  
who presided over these Courts were assisted by Mohammedan  
Law officers. The scheme of justice adopted by Warren  
  
Hastings had two main features. First, he did not apply  
  
English law to the Indian provinces; and, secondly, Hindu and  
Muslim laws were treated equally. The administration of  
criminal justice remained in the hands of Nawabs, and  
therefore, Mohammedan criminal law remained in force. These  
were the Courts in the capital. In the rest of the country  
the administration of justice was in the hands of Zamindars.  
  
In Bengal and Macras, Muslim criminal law was in fore In  
  
Bombay Presidency, Hindu criminal law applied to the Hindus,  
and Muslim criminal Taw to the Muslims. The Vyavahara  
  
Mayukha was the chief authority in Hindu Taw. But the Hindu  
  
  
Page 10:  
criminal law was a system of despotism and priesteraft. It  
did not put all men on equal footing in the eye of law, and  
  
the punishments were discriminatory.¢  
  
In 1773, the Regulating Act was passed, which  
affected the administration of criminal justice. Under that  
Act a Governor-General was appointed and he was to be  
assisted by four Councillors. A Supreme Court of Judicature  
was established at Fort William, Bengal. This court took  
cognizance of all matters - civil, criminal, admiraity and  
ecclesiastical. An appeal against the judgement of the  
Supreme Court lay to the King-in-Council. Ali offences which  
were to be tried by the Supreme Court were to be tried by a  
jury of British subjects resident in Calcutta. Any crime  
committed either by the Governor-General, a Governor, or a  
Judge of the Supreme court, was triable by King’s Bench in  
England. The Charter of Justice that laid the foundations of  
the jurisdiction of the Supreme Court was dated March 26,  
1774, and the justice administered in Calcutta remained so  
until the  
  
cablishment of the High Court under the Act of  
1e81.  
  
In 1781, amending Act was passed to remedy the  
defects of the Regulating Act. This Act expressly laid down  
and defined the powers of the Governor-General in Counct! to  
constitute provincial courts of Justice and to appoint a  
  
Committee to hear appeals therefrom. The Governor-General  
  
  
Page 11:  
was empowered to frame regulations for the guidance of these  
Courts. Muslim criminal law was then applicable both to the  
  
Hindus and Muslims in Bengal.  
  
In 1793, towards the close of Lord Cornwallis’  
Governor-Generalship, fresh steps were taken to renew the  
Company's Charter. Accordingly, the Act of 1793, which  
consolidated and repealed certain previous measures, was  
  
passed.  
  
1.08. In the mofussi] towns in Bengal, the law officers  
of the Zilla and City Courts, who were Suddar Ameens and  
Principal suddar Ameens, were given limited oowers in  
criminal offences, They could fine up to Rs.50 and award  
imprisonment, with or without labour, upto one month only.  
An appeal from their decision lay to the Magistrate or Joint  
Magistrate. offences for which severe punishment was  
prescribed were tried by Magistrates, who were empowered to  
inflict imprisonment extending to two years with or without  
hard labour, There were also Assistant Magistrates and  
  
Deputy Magistrates but they had not full magisterial powe;  
  
Offences requiring heavier punishment were transferred to the  
Sessions Judge. Death sentence and 1ife imarisonment ,  
awarded by Sessions Judges, were subject to confirmation by  
the Nizamat Adalat. An appeal from the decisions of Sessions  
Judges lay to the Nizamat Adalat. Such was the criminal  
  
administration in Bengal up to 1833.  
  
  
Page 12:  
In Madras, District Munsiffs had limited criminal  
jurisdiction, They could fine up to Rs.200 or /and award  
upto one month’s imprisonment. By regulation x of 1818,  
  
Magistra  
  
we  
  
‘empowered to inflict imprisonment upto one  
year, There were also Suddar Ameens who tried trivial  
offences. Offences of heinous nature were forwarded for  
  
trial to the Sessions Judge, offenc  
  
against the State were  
referred to the Fouzdari Adalat. The Fouzdari Adalut was the  
  
chief criminal court in the Madras Presidency, and was vested  
  
with all powers that were given to the Nizamat Adalat in  
  
Bengal.  
  
The administration of criminal justice in Bombay  
  
was on the pattern of Bengal and Madras presidencies with  
  
tain minor changes.  
  
The practice and procedure in courts in Sengal,  
Madras and Bombay were prescribed by Regulations which were  
passed from time to time. In Bengal 6875 Regulations were  
Passed from 1793 to 1834; in Madras 250 Regulations were  
  
passed from 1800 to 183:  
  
and in Bombay 259 Regulations were  
Passed during the same period.  
1.08. The History of the Indian Penal code, or the code  
  
of Criminal Law prevailing in British India, commences with  
  
the year 1833, the year which followed the Reform 8111, a  
  
Period which w  
  
full of the subject of Law Reform, and of  
the Reform of Criminal Law in particular, Indirectly the  
  
Indian Penal Code owed its origin to Bentham, the most  
  
  
Page 13:  
conspicuous writer of the day on the subject of Law Reform,  
whose death had occurred only in the previous year. James  
Mi11, Bentham’s favorite disciple, had written the History of  
  
British India under the influence of Bentham's ide:  
  
8. Thus,  
owing, in a gr  
  
tt measure, to the influence of these two  
authors, the necessity for extensive legislation for India  
  
was keenly and widely folt.  
  
4.07. In 1833, Macaulay moved in the House of Commons to  
codify the whole criminal law in India and bring about  
uniformity, Lord Macaulay, while speaking on the 8111 in the  
  
British Parliament, said -  
  
“I believe that no country ever stood so much in  
  
need of a Code as India, and I believe also that  
  
there never was a country in which the want might  
  
be so tly supplied. Gur principle ts simply  
this - uniformity when you can have it; diversity  
when you must have it; but in all cases,  
  
certainty."7  
  
Lord Macaulay algo told the House of Commons that  
Mohammedans were governed by the Koran and in the Bombay  
Presidency Hindus were governed by the institutes of Manu.  
Pandite and Kazis were to be consulted on points of law, and  
in certain respecte, the decisions of courts were arbitrary.  
  
Thus the year 1833 is a gré  
  
t landmark in the history of  
  
  
Page 14:  
codification in India. The Charter Act of 1833 introduced a  
Single Legislature for the whole of Gritish India. The  
Legislature had power to legislate for Hindus and Mochammedans  
  
alike for Presidency towns as well as for mofussi) a  
  
1,08. Accordingly, the Charter Act of 1833 (3 and 4 will,  
Iv.c. 85) was passed, by which the Governor-General of  
India, was empowered to legislate for the whole of India. To  
assist this project a Commission under the Chairmanship of  
Lord Macaulay was constituted which consisted of himself and  
two members namely, - Mr. Millet and Sir John ¥’Leod.  
  
During the years 1834-38 the Commission drafted what  
  
afterwards became the Indian Penal Code. From 1838 to 1860  
  
the draft Code remained in the form of a mere draft.  
  
undergoing elaborate revision by the Legislative Council,  
Under the supervision of late Sir Barnes Peacock the 8111  
concerning the Penal Code was passed into Taw and became Act  
  
XLV, of 1860,  
  
1.09. The Title of “Indian Penal Code” given by the Law  
  
Commission to the basic criminal law aptly describes its  
  
contents. The word “penal” no doubt, emphasizes the aspect  
©f punishing those who transgress the law and commit  
  
offences, but it could hardly be otherwise, so long as  
  
  
Page 15:  
punishment and the threat of it are the chief methods known  
to the State for maintaining public order, peace and  
  
tranquillity.  
  
1.10. In June 1971, the Law Commission had submitted its  
42nd Report for revision of the Indian Penal Code.  
Accordingly, the Government had introduced a 6111, namely,  
the Indian Penal Code (Amendment) Bi11, 1978 in Rajya Sabha.  
That Bi11 was passed by the Rajya Sabha. However before  
  
sing the Bi11, the then Lok Sabha was dissolved and the  
  
said B11) could not find a plece in the book of statutes.  
  
Since then much water has flown and a number of new  
  
problems and issues have come to light, which gave ris  
  
to  
the necessity of undertaking @ further comprehensive revision  
of the Indian Penal code, with special reference to the  
provisions of the Indian Penal Code (Amendment) Bill, 1978  
It was precisely for that purpose that the Government of  
India requested the Law Commission to undertake revision of  
the Indian Penal Code, with special reference to the  
  
aforesaid B11, in the light of current socio legal scenario.  
  
In this background, a comprehensive study for  
revision of the Indian Penal Code, particularly with  
reference to the Indian Penal Code (Amendment) 8111, 1978 was  
  
undertaken.  
  
  
Page 16:  
waite In order to elicit public opinion on the relevant  
issues the Commission circulated a detailed questionnaire and  
  
also working paper in ri  
  
pect of the main issues to all the  
State Governments, Director-Generals of Police of al) States,  
  
Supreme Court and High Court Judges, Sar Associations.  
  
Professors of law, Advocates. an¢\_—\_ Non-Governmental  
organisations. Various responses were taken —into  
consideration ( vide Annexures). The Commission organised  
  
several workshops at Hyderabad, Vishakhapatnam, Goa, Shimla  
and a National Seminar was held at Delhi. at all these  
places the Commission had the benefit of discussion with  
judges, senior lawyers, solice officers, tesa’ academicians  
and non-governmental organisations. Al) the clauses of the  
1.P.c, (Amendment) 8:11, 1978 were discussed thread-bare in  
all these workshons. After making an intensive study, the  
Commission apart from focussing on the important iscues, has  
in a separate chapter discussed every clause of the 8111 ane  
ha  
  
made the necessary recommendations keeping in view the  
new trends since 1378, and they have to be duly considered  
  
before introduction of a fresh 8111.  
  
However, at this stage, we may also mention that  
  
under Clause 197 of the 8111, for the existing Chapter XIX, a  
  
ring the sama number (Chapter XIX) 18 sought  
to be inserted to deal with “Offences against Privacy”. In  
the existing chapter XIX, three sections namely, sections  
  
90, 491 and 492 a1  
  
mentioned. But out of them sections 490  
  
Wend 492 are repealed and the only remaining section 431 deals  
  
  
Page 17:  
with “Breach of Contract” to protect the contractual rights  
of helpless persons. In the proposed new Chapter XIX which  
is sought to be substituted in place of the existing Chapter,  
sections 491 to 492 are mentioned and they deal with  
  
“offences  
  
inst Privacy” 11ke use of artificial aetening  
or recording apparatuo either to Teten or to record  
conversation of person or persone without their knowledge or  
consent or making unauthorised photographs, etc. We have  
cr  
  
It with this clause in detat! in Chapter xII after duly  
  
referring to the contents of 42nd Report ae well as the  
  
concept of right to privacy as extended under Article 21 of  
the Constitution and also various reporte of foreign Law  
Commigsions and ultimately recommended that these offences  
cannot appropriately be incorporated in the Indian Penal Code  
and that a separate legislation should be there to  
comprehensively deal with such offences against privacy. It  
is also mentioned that Law Commission is proposing to take up  
a comprehensive study on this subject separately as early as  
  
possible.  
  
  
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a.  
  
FOOT NOTES  
  
Nelson, “Indian Penal Code”, (1897) Pp.  
  
Ratanial & Ohirajlal, “The Indian  
  
(1982) pote  
  
Id. pitt.  
  
Ipid.  
  
Ibid.  
  
Id. p.tit  
  
Diwan Anil, “Indian Advocates”, Vol.  
  
v7  
  
Penal  
  
XXVy  
  
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CHAPTER = IT  
  
SENTENCES AND SENTENCING - PoLICT  
  
‘a PROCEDURES  
  
A healthy administration of criminal law te  
  
intial for a proper functioning of the constitutional  
democracy. It ie the criminal law that protects the soctety  
from the intentional and culpable acts of individuals or  
group of individuals. criminal law alec prescribes many  
preventive measures for, it 1@ well-settled that prevention  
je better than cure. However, we have to refresh our views  
on the problems of crime and its punishment keeping abreast  
  
with the fast developments all around.  
  
2.02, The purpose which punishment achieves or ie  
required to achieve are fourfold.! First, retribution; 1.0.  
taking of eye for eye or tooth for tooth, The object behind  
this is to protect the society from the depredations of  
  
dangerous persons; and 60, if somebody takes an oye of  
  
another, his eye is taken in vengeance. This form of  
Dunishment may not receive general approval of the society in  
Our present state of social conditions and understanding of  
  
human psychology.  
  
  
Page 20:  
16  
  
The other purpose of sentencing is preventive. we  
  
fare sure that the sentence of imerisonment suffered would be  
lan eye opener to the convict and he would definitely not  
  
venture to repeat the illegal act again.  
  
Deterrence 1s another object which punishment 1e  
required to achieve. Incarceration of sentence undergone by  
the convict and upholding of hie conviction by Court 1s  
likely to have ite effect, and should deter others from  
  
indulging in similar illegal acts.  
  
As against the retributive, deterrent and  
preventive theories of punishment, the reformative approach  
to punishment as a measure to reclaim the offender lays  
‘emphasis on rehabilitation so that the offenders are  
  
transformed into good citizens.  
  
The various theories have been reviewed from time  
to time. The theory of expiation and the theory of  
Fetribution have faded out. Some jurists also have their own  
doubts about the theory of deterrence. They doubt whether  
there ie something inherent in it which ie aimed at the  
  
Protection of soctety.  
  
fiz.03, coming to the auestion of abolition of death  
MPentence which we will examine in the next chapter, it is  
  
Mmesonably felt that the deterrence do  
  
work in appropriate  
  
Wes depending on circumstances and it cannot altogether be  
  
  
Page 21:  
eliminated in the administration of criminal Justice. There  
are certain types of offences for which deterrent sentence te  
  
necessary. The growing menace of economic offences dose  
  
warrant awarding deterrent sentence and a minimum sentence of  
imprisonment should be made compulsory. We find such  
provisions in certain enactments dealing with economic  
  
offences.  
  
But at the  
  
me time there are certain offences  
which, when examined in the background of circumstances, do  
not attract deterrent sentence. In the case of juvenile  
delinquency, it is the reformative theory that has gained  
significant recognition. By a syetematiced reformation, the  
Juvenile offenders can successfully be prevented from  
resorting to criminal activities and the tendency towards  
crime can be curbed. If they are left untouched they may  
prove to be greater menace to the society by becoming  
hardened criminals as they gat mentally developed. rt ie on  
the mental development that the reformative theory laye ite  
  
stress.  
  
2.04, Now coming to the other types of offencs  
  
against  
Person and property, the provieions of the Indian Penal Code  
have fairly stood the test of time in the matter of awarding  
Punishment. Depending upon the gravity of the offence the  
  
, Punishment varies. It is generally felt that too lenient =  
  
z Sentence does not meet the ende of justice.  
  
But the courts  
  
  
Page 22:  
fare seen generally reluctant to award alwaye a severe  
sentence. Therefore, it 18 well-settled that the punishment  
  
je an art which involves the balancing of several factors.  
  
It 18 accepted that punishment is only the  
manifestation of crime, the second half of which is  
necessarily pre-supposed in the first, and the deed of the  
criminal Judges itself, The State as the punishing authority  
never thinks in terme of retribution and old notion of  
retribution has no place in the modern world. Our penal  
jaws, particularly the Indian Penal Code, gives latitude to  
the court in awarding the prescribed sentence. In the matter  
of infliction, the punishment as a deterrent is expected  
  
to serve twofold purpose =~ individual and general.  
  
The object is to teach the offender a 1  
  
jon and at the same  
time to demonstrate to the public that such offences would  
attract a severe punishment. Deterrence does work, but it  
may not be correct to presume that it works well in alt  
  
circumstances and in all cases  
  
2.08. Our system recognises reformative theory also. The  
Borstal School Act, 1926: The Juvenile Justice Act: 1980 and  
robats: fof fender: are some of the  
  
enactments which reflect the reformative approach, Caldwel?  
observes thus:  
  
  
Page 23:  
“punishment is an art which involves the balancing  
of retribution, deterrence and reformation in terms  
not only of the court and the offender but also of  
the values in which it takes place and in the  
balancing of these purposes of punishment, first  
fone and then another, receives emphasis as the  
  
‘accompanying conditions change. “2  
  
It js generally felt that punishment under the  
Indian Penal Code needs review. The sentence of 14 years as  
  
it works out ultimately in the c  
  
of sentence for murder,  
  
4s considered to be low and lens  
  
nt. Likewise, the sentences  
in respect of certain offences against property are  
considered to be not conmensurating with the degree of crime  
Vike cheating and forgery, particularly committed in respect  
of the public institutions. So far as the economic offences  
are concerned, it is universally accepted that severe and  
deterrent sentences should be awarded. Il logical and  
unreasonable variations in punishment have brought the courts  
under criticism, To enable the court to arrive at a correct  
determination of punishment, it is essential that all the  
information about the antecedents of the accused should be  
there. There are so many relevant factors in determination  
©f the quantum of sentence. So far as habitual offenders are  
concerned, section 75 of the I.P.c. provides for enhanced  
Punishment of imprisonment. | Many eminent jurists have  
Pointed out that when the discretion is given to the judges  
  
sin the matter of awarding punishment and for an effective  
  
  
  
Page 24:  
exercise of such a discretion, the judge has to resort to the  
additional fact-finding processes. Therefore, a time has  
come to coneider whether an independent authority like  
Probation Officer should be required to gather the necessary  
information about the accused and which information should be  
made available to the judge before awarding punishment to  
that individual accused. Having regard to the fast changes  
in the society and social thinking, it has also become  
  
necessary to modify the provietone of the Goretal Schools  
  
Act, 1928, Juvenile Justice Act, 1988 and Probation of  
  
Offenders Act, 1958 suitably.  
  
2.08. A survey of the provisions of the Indian Penal Code  
  
@ that out of S11 sections in the Indian Penal code  
  
330 are punitive provisions, the remaining being definitions,  
  
exceptions and explanations. The offences covered by th  
  
punitive provisions are broadly divided into two categories  
(4) cognizable and (ii) non-cognizable on the lines of  
  
arrestable and non-arrestable.  
  
In our law the Police are prohibited from  
investigating the non-cognizable offences mainly on the  
Ground that most of them are trivial. The offences are then  
  
further divided into bailable and non-bailable depending upon  
  
the gravity of the offence. About 120 offences in the Indian  
  
nal Code are non-cognizable. In many workshops it ws  
  
Beinted out that thie division requires to be re-examined in  
  
Bet context, of rapia soctal changes and that some of them  
  
  
Page 25:  
should be made cognizable. It 1s voiced that some trivial  
offences affecting public order also can lead to serious  
  
developments if they are not di  
  
t with promptly and,  
therefore, it ie desirable that euch offences are made Tiable  
  
for public intervention.  
  
We are of the view that such a  
  
‘examination is nec  
  
ary and the offences punishable  
under sections 290, 298, 431, 432, 494, 504, 506 and 510  
  
should be made cognizable.  
  
In eection 53 Indian Penal Code, the punishments  
  
that can be imposed are mentioned. Section 53 is in the  
  
following terms:  
  
“53. Punighmente.- The punishments to which  
offenders are liable under the provision of this  
code are -  
  
Firet,- Death;  
  
Secondly,~ Imprisonment for lif  
Thirdly,- (Replaced by Act 17 of 1949); Fourthly,  
which 18 of two descriptions, namely:~  
  
(1) Rigorous, that fe, with hard labour;  
  
(2) Simple:  
  
Fifthly,- Forfeiture of propert  
  
Sixthly,- Fine  
  
  
  
Page 26:  
2.07. The Law Commission in its 42nd Report considered  
the question whether any changes are necessary but did not  
  
recommend any change regarding the types of pun’  
  
srment. ty  
however, recommended certain changes only in sections 64 to  
49, 71 and 75. The Commission also recommended that a new  
ection 58 should bo inserted with effect that the  
imprisonment for life shall be rigorous. To the sane effect  
are the recommendations made by the Law Commission in its  
goth Report regarding the punishment of imprisonment for  
  
life.  
  
In the Indian Penal Code (Amendment) 8111, 1978,  
  
however, certain other typ  
  
of punishments are proposed to  
be added in section 62 and these are community service  
disqualification from holding office, order for payment of  
compensation and public censure. In the various workshops  
held it is highlighted that the punishment of community  
service is not practicable. It is also voiced that the fine  
amount fixed many years ago have no relation to the realities  
to the present changed economic scenario and therefore, an  
upward revision is necessary. Doubts have been exoressed  
  
wheth  
  
the respective punishments  
  
namely, disqualification  
from holding office and public censure should be included in  
fection 53. tt ig said that when there is conviction and  
Bunishment is awarded, disqualification from holding office  
ehould automatically be called for by virtue of the service  
Krutes or in view of the regulations governing the management  
  
Bist corporations. Likewise, it wi  
  
voiced that public censure  
  
  
Page 27:  
or 23  
  
does not relate to the concept of punishment and, therefore,  
1t would be out of place to include the same in section 53.  
‘The National Commission for Women recommended that more  
  
evere punishment should be awarded under section 376.  
  
At this stage it is nec  
  
ary to consider a few  
  
important criteria tn the ass.  
  
ment of the value and impact  
of punishment, It has to be borne in mind that crime te a  
phenomenon of time and an opportunity to which the need and  
compulsion are to be added. These factora reflect the  
problens like environmental, social, psychological and  
‘economic, in the society. The ultimate object of criminal  
Jaw is to prevent crime, Regarding the determination of what  
should be the proper sentence in a particular case should  
necessarily be left to the court except in respect of the  
offences where minimum sentences ara prescribed, and where  
the discretion of the court is curtailed. The Law Commission  
  
in its 14th Report observed:  
  
“The determination of what should be the proper  
  
sentence in a particular case has always been left  
to the court for the very weighty reason that no  
‘two cases Would ever be alike and the circumstances  
under which the offence was committed and the moral  
turpitude attaching to it would be matters within  
the special knowledge of the court which has tried  
the case. There can be no rule of general  
  
application laying down a specific quantum of =  
  
  
Page 28:  
o1 2h  
  
punishment that should be inflisted in the c:  
  
of  
@ particular offencs  
  
A sound judicial discretion  
on the part of the trial judge in awarding  
punishment can alone distinguish between caso and  
case and fit the punishment to the crime in each  
  
individual case.\*  
  
2.08. The Law Commission in ite 42nd Report also  
considered the position whether the present distinction  
between simple and rigorous imprisonment should be done sway  
with and all offenders deserving jail sentence should be  
simply sentenced to imorisonment for a specified term,  
Jeaving it to the jail authorities and the prison rules to  
reguiate the Kind of work to be taken from particular classes  
of prisoners: The Commission, however, ultimately  
recommended that the legislative policy underlying the  
Glassification is sound and should be maintained. It may be  
mentioned that under the Indian Penal Code the majority of  
the offenc  
  
are punishable with “{mprisonment of either  
  
description”, and only few with simple imprisonment, thereby  
  
Jeaving it to the discretion of the court. No doubt the  
  
court while awarding  
  
ntence has to take into consideration  
‘the nature of the offence, the motive, state of mind, the  
extent of breach of duty, the manner of commission of a  
  
‘ime, the means employed in its commission, the age and  
Ec: social set up that have taken, a fresh look to  
  
sider the efficacy of punishments have become ne  
  
sary.  
  
  
Page 29:  
‘A serious study on the question of revising the Viet of  
offences and also ‘of describing punishments ie felt  
necessary. Then the time scale and the eystem of punishment  
has to undergo a change. Taking up the justification of  
deterrent punishment, we find that the objective aimed at the  
protection of the society, and the expectation that people  
  
will refrain from committing the offence for fi  
  
roof  
deterrent punishment have not resulted in refraining the  
  
people from committing offenc  
  
However, in the matter of  
infliction, the deterrent punishment is expected to serve  
twofold purpose individual and general. A survey of the  
system of punishment obtaining in various countries would  
show that the concept of deterrence cannot be entirely  
‘@liminated from the present day policy of criminal law.  
However, the reformative theory of punishment has gained  
  
considerabte importance and it  
  
ms at reformation by  
stressing that the offender should while being punished by  
detention, there is a need to expose him to educative,  
  
healthy and ameliorating influences. If the offender can be  
  
re-educated and traits of his character can be re-shaped, he  
ean be put once again in the mainstream.  
2.09. Now coming to the sentencing, policy in the various  
  
workshops it is voiced that the amounts of fine to be imposed  
should considerably be enhanced and it should, as far as  
Possible, be substitute for short-term imprisonment. It is  
  
also expressed that the poor victims of uses and abuses of  
  
‘criminal law should be compensated by way of reparation and  
  
  
Page 30:  
‘that the amounts of fine prescribed Tong ago have lost their  
  
relevance and impact in the pre  
  
nt day and the fins  
  
imposed  
  
have no relation to the economic structure of society and  
  
ry element of deterrence is generally absent.  
  
‘An examination of the various sections in the Code  
  
where  
  
@ provided for, reveals that from a  
  
aininum fine of Re.100/- it vartea up to Re.1,000/-. In  
respect of most of the offences it is below Rs.500/-.  
  
Therefore, @ change regarding the quantum of fine should be  
  
ade in all those sections correspondingly, at least by 20  
times and make a provision in the Code of Criminal Procedure  
regarding the powers of the First Clase Magistrates to Impose  
  
such a fine.  
  
the main problem with the fine is in respect of the  
defaulter, In this context, the financial status of the  
offender also becomes relevant. A rich man can pay the fine  
and avotd being imprisoned in default whereas a poor man who  
  
yannot afford to pay the fine hi  
  
to undergo the  
  
impr tsonment.  
  
2.40, A statistical survey shows that imposition of fine  
  
by the criminal courte is much more frequent than before, To  
  
ameliorate the problem regarding payment of fine by an  
fndigent accused 1t would be salutary to make him pay the  
Mine in instalments, namely, a gradation between different  
  
Benaities corresponding to the resources of the offender.  
  
  
Page 31:  
some of the eminent jurists have observed that a provision of  
instalment payment of fines besides saving the tax-payer’s  
money and the prisoner from an unwholesome experience and  
  
incidental demoralisation, creat  
  
a wholesome effect on the  
family of the offend  
  
Th the case of defaulters, ever  
  
where such benefit is given, some other course can also be  
  
evolved. He can be put on compulsory work outside the  
  
prison, @.9-, "on public projects like dams, roads or cur:  
construction. Thus there are so many advantages of fine  
  
being the punishment as far  
  
poseible besides the same  
having @ reformatory treatment. The fines thus collected can  
usefully be utilised by the State. Of course, there are  
certain disadvantages noticed. One of them is that fines in  
practice are adjusted to the offence and therefore bear  
unequally on the rich and the poor. The fear of fine does  
Rot stop rich people from committing certain offences. No  
  
doubt some of the objections are of some importance; but  
  
taking an overall view it cannot be denied that fines have an  
important role to play in law enforcement but they must be  
fmposed with the sound discretion and understanding  
Particularly the means to pay. They, however, should not be  
  
used  
  
dealing with habitual offenders, prostitutes, drug  
Addicts, etc. since imposition of fine on them cannot have  
  
any expected reformative results.  
  
With this background, we propos!  
  
to examine the  
  
k ious types of punishment proposed in the 8111.  
  
  
Page 32:  
ate Section 63 to 78 in Chapter IIT of the Code deal  
with punishments that can be awarded under the Code, Clause  
18 of the B111 provides for substitution of  
  
ction 63 by a  
new section which ts as follows:  
  
"53. Puntshmente.- The punishment which may be  
imposed on conviction for any offence are - |  
w death;  
  
an imprisonment for 1ife which shal? be  
  
rigorous, that i  
  
+ with hard labour;  
  
ait imprisonment for a term which may be ~  
(a) rigorous, that is, with hard  
Vabour, or  
(>) simp. that ie, with light  
abou  
ay) Community service;  
Ww) Disqualification from holding office;  
wt) order for payment of compensation;  
(vit) forfeiture of property;  
(itt) fine;  
Gx) public censure.”  
  
We find that in the proposed section the imprisonment for  
Tife shall be rigorous, that is, with hard labour. This  
Sescription of imprisonment is not there in the existing  
Mection. Likewise simple imprisonment can be with Tight  
  
fabour.  
  
  
Page 33:  
Four new types of punishments are included, namely,  
(4) community service, (ii) disqualification from holding  
office, (111) order for payment of compensation and (iv)  
  
In  
  
public censure. ction 53 the punishment, namely,  
  
“transportation for life” was substituted by the words  
“imprisonment for life” by Act 26 of 1969. Section 83A which  
  
has been added by Act 26 of 1969 states that in every case in  
  
which @  
  
ntence of transportation for a term hae been  
  
paseed, the sentence shall be dealt with in the came manni  
  
as rigorous imprisonment for the same. Questions often arcee  
  
before the courts whether the punishment “imprisonment for  
  
life” means “rigorous imprisonment for life". The Law  
Commission in its 39th Report noted that there is no clear  
  
provision  
  
to how the person sentenced to imprisonment for  
  
life should be dealt with under the law as it now stand  
  
namely, whether 1t should be same as sentence of rigorous  
imprisonment for life or simple imprisonment for life and  
whether it ia a punishment different in quality despite being  
,Sifferent in duration when the sentence of imarisonment of  
either description or for a specified term and whether it 1s  
‘legally permissible for a court passing a sentence to lay  
{own that the imprisonment for life shall be rigorous or  
  
Bimp Since there is no clear provision, a mew section 56  
Bs sought to be inserted in the Code of Criminal Procedure to  
Bre ettect “imprisonment for 1ife shall be rigorous with a  
Few to resolve the doubts”. Correspondingly, the proposed  
  
[Bendment making imprisonment for life rigorous is necessary.  
  
  
Page 34:  
he other change, namely, that simple imorigonment as  
compared to rigorous imprisonment can be with a light Tabour  
  
{e also a desirable change.  
  
2.12. Now coming to the “community service” by way of  
  
punishment, the question is whether it is practicabl:  
  
The  
punishment by way of community service is a new concept and  
  
clos  
  
ly connected with reformative theory. In “Declaration  
  
of Principles of Crime and Punishment of the Cincinnatt, Ohio  
  
meeting of the First Congress in 1680", it was ob  
  
rved, “the  
supreme aim of present discipline is the reformation of  
criminals, not the infliction of indigent suffering". on  
these lines the All India Jail Manual Conmittes has also  
suggested the system of open jaile for the rehabilitation and  
pre-release preparation of the prisoners. It is an accepted  
principle that the ultimate object of punishment is to make  
the anti-social person a good citizen. The open air jail  
system is recommended to achieve this object of  
rehabilitation and pre-release of the prisoners by giving  
then necessary training and adopting correctional methods.  
  
It is recognised that with a view to rehabilitate the  
  
Prisoners socially, they should be employed in work which  
wi11 prepare them for useful and remunerative employment  
after ri  
  
However, it is to be borne in mind that in  
this open air prison system the prisoner enjoys a degree of  
  
freedom but not fully. The community service no doubt is  
  
  
Page 35:  
another innovation in the direction of correctional methods  
put as voiced in many workshops 1t may not be practicable to  
  
give an effect to and also may not amount to a punishment.  
  
Clause 27 of the B11! provides for insertion of @  
new section 74A exclusively to deal with punishment of  
  
community service and is in the following ter  
  
“74a. (1) Where any person not under eighteen  
years of age is convicted of an offence punishable  
with imprisonment of either description for a term  
not exceeding three years or with fine, or with  
both, the court may, instead of punishing him as  
  
afore!  
  
id or deating with him in any other manner,  
make an order (hereinafter in this section referred  
to as the Community Service Order) requiring him to  
perform, without any remuneration, whether in cash  
or in kind, such work and for such number of hours  
land subject to such terms and conditions, as may be  
  
specified in the said Order:  
  
Provided that the number of hours for  
which any such person chal! be required to perform  
work under @ Community Service Order shall be not  
Jess than forty hours and not more than one  
  
‘thousand hours:  
  
  
Page 36:  
Provided further that the court shall  
not make a Community Service Order in respect of  
  
any such person, unlese-  
  
(a) such person consents in writing to  
Perform the work required of him under such order:  
  
(>) the court i satisfied that euch person  
  
@ suitable person to perform the work required  
  
of him and that for the purpo:  
  
of enabling him to  
do such and such work under proper supervieton,  
  
arrangements have been made by the State Government  
  
or any local authority in the a in whten such  
  
Person is required to perform such work.  
  
(2) Every Community Service Order made under  
  
\*eub-:  
  
ection (1) shall specify the nature of the  
work to be performed by such person which shall be  
  
of general benefit to the community.  
  
a) Where the court by which any Community  
Service Order was made is satisfied at any time  
  
that  
  
fa) any person against whom a Community  
  
Service Order has been made under sub-  
  
ection (1  
has failed, without reasonable cause or excuse, ti  
comply with any of the terms and condition  
  
specified in such Ord  
  
or  
  
  
Page 37:  
() having regard to the circumstances that  
exist subsequent to the date of making the  
Community Service Order, it ie necessary or  
  
expedient in the intert  
  
2 of justice so to de, it  
may-  
  
@ ina case falling under clause (a),  
modify or revoke the Community Service Order and  
ct  
  
1 with the person convicted of the offence in  
such manner as he may have been liable to be dealt  
with for the offence in relation to which such  
order was made or, without prejudice to the  
continued operation of the Community Service Order,  
  
impose on hima fine not exc  
  
ding one hundred  
rupees; or  
  
ct) in a case falling under cla  
  
>,  
modify or revoke the Comunity Service Order and  
deal with the person convicted of the offence in  
such manner as he may have been liable to be dealt  
  
with for the offence in  
  
ation to which such  
  
Order was made.  
  
«) Where a court makes two or more  
Community Service Orders against a person convicted  
of two or more offences at the same trial, it may  
direct that the hours of work required to be done  
under any Community Service Order shall be  
  
concurrent with or in addition to the hours of work  
  
  
Page 38:  
‘under’ any Gf’ the Commuttity Service Orders made “by  
‘the’ court at the ‘same trial, subject to the  
condition that the total number of hours of work to  
befdcne by such person under all or any sich  
Community Service Orders shal1 not exceed one  
  
thousand hours:  
  
2.19 A careful reading of this.new section shows that  
  
the punishment of community  
  
vice can be awarded to any  
Person above eighteen years of age convicted of an offence  
punishable with imprisonment of either description for a term  
  
not exceeding three years or with fine or with both and the  
  
court instead of sending him to the prison or dealing with  
any other manner make an order, namely, “community service  
  
order” requiring the said convict to perform without any  
  
remuneration such work for such number of hours subje:  
  
certain terms and conditions. In other words, an order  
  
called community service order is passed after conviction by  
way of punishment with al1 those conditions mentioned in the  
Proposed section 744. The implementation oart of it is  
Provides in sub-section 1A and 1B and work is to be performed  
under proper supervision as per the arrangements to be made  
by the State Government or any local authority. sub-section  
(2) lays down that the nature of the work to be performed by  
‘the convict has to be specified. The object underlying in  
awarding this kind of punishment though outwardly appears to  
be attractive, but there are any number of difficulties in  
  
enforcing the same. A mere reading of sub-section (3) makes  
  
  
Page 39:  
the point clear. This section contemplates a supervisory  
authority to see whether the convict ie working and rendering  
  
vice for the number of hours specified and if he fails to  
  
do so by way of default, he has to be sentenced thereafter.  
We think an open air prison system is better suited from the  
  
point of view of the correctional mes  
  
rather than the  
  
proposed punishment of community servic  
  
244. The next aspect is whether the punishment  
“disqualification from holding office” should be incorporated  
  
in section 53 of the Indian Penal Code. In come types of  
  
cases particularly involving public servants and other  
persons holding office in corporations, companies, registered  
societies, etc., ending in conviction shoulé necessarily  
entail with the disqualification from holding office, but  
such a course is intrinsically connected with their  
respective service rules and regulations. It is a matter of  
common knowledge that in almost all such service rules wo  
J ting some provision or other disqualifying such a person  
after conviction, from holding the office. Therefore, it  
Would be appropriate to leave the issue to be decided by the  
  
concerned authorities under all thos  
  
rut  
  
and regulations  
  
5 Because incidentally some other questions pertaining to the  
Bervice conditions may also arise which warrant a further  
inquiry,  
  
  
Page 40:  
Bes.  
  
Coming to the payment of compensation by way of  
  
funtonment, the Supreme Court in Shri Bodhiaattaws Gautan v  
  
ise subhra chakraborty,\* citing its earlier decteion tn  
Bunt Domestic working Women’s forum v Union of Indiet  
  
Boeorves:  
  
[The court,  
  
"It ie necessary, having regard to the Directive  
Principles contained under Article 38(1) of the  
  
Constitution of India to  
  
up Criminal Injuries  
Compensation Board, Rape victims frequently incur  
  
substantial financial Tos  
  
Some, for example, are  
  
too traumati  
  
4 to continue in employment.  
Compensation for victims shall be.  
awarded by the court on conviction of the of fender  
and by the Criminal Injuries Compensation Board  
whether or not a conviction has taken place. The  
Board will take into account pain, suffering and  
  
shock as well as loss of  
  
rings due to pregnancy  
us a result of the rape.”  
added:  
  
“The decision recognises the right of  
the victim for compensation by providing that it  
shall be awarded by the Court on conviction of the  
offender subject to the finalisation of Scheme by  
the Central Government. If the Court trying an  
offence of the rape has jurisdiction to award the  
  
compensation at the final stage, there is no ré  
  
on  
  
  
Page 41:  
to deny to the Court the right to award interim  
compensation which should also be provided in the  
  
scheme."  
  
on the baste of principles set out in  
the aforesaid decision in Dethi Domestic Working  
Women’s Forum, the jurisdiction to pay interim  
compensation shall be treated to be part of the  
overall jurisdiction of the Courts trying the  
  
offences of rape which, as pointed out above is an  
  
offence against basic human rights as also the  
  
Fundamental Right of Personal Liberty and Life.”  
  
2.16. The Law Commission in its 154th Report on the Code  
‘of Criminal Procedure has recommended insertion of a new  
provision, namely, 387A providing for framing victim  
  
compen:  
  
tion scheme by the respective State Governments under  
which the compensation can be awarded to the victims on the  
Vines indicated therein wherever it is found to be necessary  
  
‘part from the compensation awarded by the court und  
  
ection 357 out of the fines, We may also indicate that  
  
anarding sufficient —comper  
  
tion depends upon many  
Circumstances which require some inquiry. Further in some  
  
c  
  
6 an order for payment of compensation need not  
Recessarily be by way of punishment. Therefore, we are of  
the view that it is not appropriate to include order for  
  
payment of compensation in section 53 by way of punishment.  
  
  
Page 42:  
Another punishment which is sought to be included  
in section 53 is "public censure’, namely, publication of the  
  
name of the offender and details of the offence and  
  
ntence:  
The proposed Section 74C provides for imposition of the  
punishment by way of public censure in addition to the  
  
substantive sentence under sub-  
  
ction (3) and this is  
limited to offences mentioned in chapters XII, XIII, sections  
272 to 276, 383° to 389, 403 to 409, 415 to 420 and offences  
under chapter XVIII of the case as offences under proposed  
new Sections 420A ané 462A under the Indian Penal Code  
(Amendment) Bi11, These are all offences where persons  
entrusted with some public duties commit offences. Such @  
punishment has great relevance in respect of anti-social  
  
offences, economic offences, otherwi  
  
called white-collar  
offences particularly committed by sophisticated persons. It  
  
js of common knowledge that while thé  
  
of fenc  
  
affect a  
  
large number of people, the of fend.  
  
are not readily booked.  
  
However at Teast in such ca:  
  
which end in conviction, the  
punishment of public censure is likely to act as a greater  
deterrence because of the fear of infamy resulting from the  
  
publicity and consequent repercussions like Tose of busine:  
  
etc. Such a censure is one of the prescribed punishments in  
  
USSR, Columbia and other countr4}  
  
In India such form of  
Punishment is included in the Prevention of food Adulteration  
Act and Income-tax Act. The Law Commission in its 42nd  
Report considered the inclusion of such a punishment and  
Fecommended that such additional punishment would be useful  
  
in the case of persons convicted for the second time of any  
  
  
Page 43:  
of the offences under chapter XII and XIII,like extortion,  
criminal misappropriation, cheating and of offences relating  
to documents. We are also of the view that such public  
censure by way of an additional punishnent should be there  
and accordingly be included in section 53 of the Indian Penal  
code and it should be left to the discretion of the court  
  
regarding imposition of the same in selective cast  
  
2.17, There are only few sections in the Indian Penat  
code which prescribe death as penalty. They are  
sections 121, 132, 194, 302, 308, and part of 307 and 396  
However, by virtue of Criminal Law Amendment Act of 1983,  
minimum sentence in respect of offence of rape has been  
prescribed under section 376 (1) & (2). A question whether  
  
there should be such minimum  
  
tence in respect of some more  
  
offences was debated and ultimately consensus is that  
  
trictions on judicial pronouncements in the matter of  
  
award of sentence on principle is not a healthy practici  
  
There may be instances occasionally where judges have failed  
to award proportionate sentences, but that cannot, however,  
be a factor to assume that the judges as a whole have failed  
to award adequate sentences. In the 14th Report as well as  
in the 42nd Report, The Law Commission examined this question  
and took the view that except in exceptional cases there  
should not be any provision for a minimum sentence. We agree  
  
with this view.  
  
  
  
Page 44:  
[ertms, it is ne  
  
40  
  
In respect of number of offences the punishment  
  
prescribed 1s “imprisonment or with fine or with both”. Tt  
  
4@ voiced in various workshops that in view of the changes in  
  
the modern society, the type of crimes and the repetition of  
  
those crimes or the frequent occurrence of certain types of  
  
ary that the punishment  
  
should be  
  
fmprisonment and in addition fine also. Having examined  
  
various provisions in the IPC and the modern trende of crime,  
  
we are of the view that in respect of the offences under  
  
sections 153, 153A, 160, 166 to 175, 177, 182, 221, 269 to  
  
291, 292, 294 to 298, 396, 465 and 477A, the  
  
punishment  
  
should be imprisonment as well as fine. Incidentally, we  
  
also suggest that the extent of imprisonment should be  
  
enhanced suitably in respect of these offences.  
  
  
Page 45:  
Or.Jacob George v. State of Kerala, 1994(2) Crimes  
100  
  
Caldwell, Criminology, p.403 cited by R.C.Nigam.  
“Law of Crimea in India\*- Principles of criminal  
Law, Vor.t, p.232.  
  
ama  
  
6(9) Sc 509  
  
ut 1994(7) sc 183  
  
  
  
Page 46:  
‘CHAPTER - IIT  
  
DEATH PENALTY  
  
Retention of Capital Punishment  
  
Clause 125 of the Bi11 seeks to substitute existing  
  
section 302 by:inserting the following provisions:  
  
“302(1) Whoever commits murder shall, eave as  
  
otherwise provided in sub-  
  
ction (2), be punished  
with imprisonment for life and shall also be liable  
  
to fine.  
  
(2) Whoever commits murder shal) =  
  
(a) if the murder has been committed  
  
after previous planning and involv  
  
extreme  
  
brutality; or  
  
(b) if the murder involves exception:  
  
depravity; or  
  
(c) if the murder is of a member of any  
of the armed forces of the union or of @ member of  
any police force or of any public servant and was  
  
committed ~  
  
  
Page 47:  
(4) while euch member or public servant  
  
was on duty:  
  
or  
(44) 4m consequence of anything done or  
attempted to be done by euch member or public  
  
vant in the lawful discharge of his duty as such  
member or public servant whether at the time of  
murder he was member or public servant, as the case  
  
may be, or had ceased to be such member or public  
  
ervant: or  
  
co) if the murder is of a person who had  
acted in the lawful discharge of hie duty under  
section 43 of the Code of Criminal Procedure 1973,  
or who had rendered assistance to a Magistrate or a  
police officer demanding his aid or requiring his  
assistance under section 37 or section 129 of the  
  
said code; or  
  
(o) 1f the murder has been committed by  
him, while undergoing eentence of imprisonment for  
1ife, and such sentence has become final, be  
puntehed with death or imprisonment for life, and  
  
shal? also be Mable to fine.  
  
  
Page 48:  
or 4a  
  
@ Where a person while undergoing sentence  
  
of imprisonment for life ie sentenced to  
  
imprisonment for an offence under clause (e) of  
  
(2), such sentence shal! run  
  
consecutively and not concurrently.”  
  
The basic issue which needs consideration is  
  
whether the capital punishment should be abolished?  
  
3.02. The framers of the Bill intended to Tiet out the  
cases when death sentence should be awarded. The question is  
whether such categories can be or may be prescribed  
  
thereunder. We would like to examine the punishment as death  
  
Penalty in detailed manner and give our conclusione.  
  
However, before taking up the examination of the relevant  
Provision, it would be desirable to refer to the development  
  
and the judicial response on the subject.  
  
The controversy of capital punishment is an age old  
  
Phenomenon. For the past few decades there has been a move  
  
to abolish death sentence. There has been a growing public  
pinion in favour of it. Some countries have even abolished  
the death penalty. In Britain, there has been a move for  
  
Festoration of death penalty supported by substantial  
  
Sections of public opinion.  
  
  
Page 49:  
There has been a worldwide feeling of humanistic  
  
roach to the criminals and punishment. Efforts have been  
  
and are being made to make punishment liberal and reform  
s prisons. For quite some time, there has been a move to  
ish death sentence. There has been a growing public  
inion in favour of it. Though it has not been abolished so  
  
7, the law has growingly become liberal in this respect.  
  
In all the offences falling under sections 121,  
492, 194, 202, 305, Second part of 207 and 396 of the Indian  
Pena! code provide for punishment of death or in the  
  
alternative, imprisonment for life. Thus, it is seen that  
  
all grave offences are made punishable with death sentence.  
Pestn sentence is executes in India by hanging by a rape  
  
until the person is declared dead.  
  
‘hos. In India the constitutionality of death penalty for  
luurder provides under Section 202 of the Indian Penal code  
land the sentencing procedure enbodied in Sec.354(3) of the  
feode of crimina) Procecure, 1973 was challenged in the  
  
Wrticles 14, 19 and 21 of the Constitution of India. The  
  
Majority view of the Constitution Bench, to whom the matter  
Bras referred, held that the provisions of death penalty as an  
Miternative punishment for murder and aiso the sentencing  
  
Brocedure in sec.263(3) Code, did not violate articies 14, 18  
  
  
Page 50:  
and 21 of the Constitution of India. The Supreme court,  
however, upheld the constitutional validity of a death  
penalty.  
  
Thus, in Jasmohan Singh v. state of Puniab' the  
Supreme Court was invited to dwell upon the constitutional  
validity of such a wide, unguided and uncontrolled judicial  
discretion to’ make a choice between “death” and “life” of a  
convict. It was forcefully argued before the five-member  
Bench that such a discretion results in discrimination and  
  
involves arbitrarine  
  
violating article 14 of the  
Constitution. The Court rejected the argument and justified  
such a wide judicial discretion owing to impossibility of  
  
laying down  
  
ntencing norms as facts and circumstances of no  
  
two cases are alike and, wrong discretion in matter of  
  
sentence, if any, {@ liable to be corrected by superior  
  
courts.  
  
3.04. Again in Bachan Singh v. State of Puniab? the  
‘Supreme Court reacting to the argument that the sentencing  
Procedure embodied in section 354(3) of Cr.P.c. allowing  
death sentence only in undefined end unguided “special  
reasons” is unfair, unreasonable and unjust, and is,  
  
therefore, violative of articl  
  
14, 19 and 21 of the  
  
Constitution, showed its reluctance to formulate rigid  
  
Standards to determine what could be “special reasons". But  
it advised the courts to pay due regard to the crime and  
  
criminal, and weigh relatively the aggravating and mitigating  
  
  
Page 51:  
factors and to ri  
  
ort to the death sentence in the most  
  
exceptional cl.  
  
of cases - “the rarest of rare cases” ~  
  
when the alternative option is unquestionably foreclosed.  
  
Section 354(3) 16 in the following termar  
  
“when the conviction is for an offence punishable  
with death or, in the alternative with imprisonment  
  
2 for life or imprisonment for a term of years, the  
  
Judgment shall state the reasons for the sentence  
  
awarded and, in the c  
  
@ of sentence of death, the  
  
‘special reasons for such sentence”.  
  
From a reading of section 354(3) of cr.P.c. and other  
  
related provisions it is cl  
  
r that for making the choice of  
Punishment or for accepting the existence in that context,  
the court mist pay due regard both to the erime and the  
criminal, The relative weight that can be given to the  
aggravating and mitigating factors depends on the facts and  
  
circumstances of the particular cai In imposing sentence  
  
the main aspects of the character and magnitude of the  
offence and the court has to keep in view the proportion  
which must be maintained between offence and the penalty and  
the other attendant circumstances that exist. in the case.  
  
The Supreme Court in a series of cases ruled that  
  
death penalty be awarded in “rarest of rare” ca  
  
  
  
Page 52:  
=: 48  
  
In Machhi Singh v. State of Punjabt a ®ench of  
  
three Judges of the Supreme Court having noted the principles  
  
vad down in Bachan Singh's case (eupra) regarding the  
  
forma of ‘rarest of rare case  
  
for imposing death  
  
eentence, ob:  
  
ved that the guidelines indicated in Bachan  
Singh's ct  
  
will have to be culled out and applied to the  
facts of each individual case where the question of imposing  
  
of death sentence arie  
  
It was further observed as under:  
  
“If upon taking an overall global view of all the  
circumstances in the light of the aforesaid  
proposition and taking into account the answers to  
‘the questions posed hereinabove, the circumstances  
of the case are such that death sentence is  
  
warranted, the court would proceed to do #0”  
  
Likewise in Allauddin Mian ang Others v. State of  
Bihar‘ the same view has been reiterated thus:  
  
“However, in order that the sentences may de  
  
Properly graded to fit the degree of gravity of  
  
ch case, it i necessary that the maximum  
  
tence prescribed by law should, as observed-in  
Bachan Singh's case (A.I.R. 1980 S.c. 898), be  
reserved for the rarest of rare cases which are of  
a exceptional nature. Sentences of severity are  
imposed to reflect the seriousness of the crime, to  
  
Promote respect for the law, to provide just  
  
  
  
Page 53:  
punishment for the offence, to afford adequate  
deterrent to criminal conduct and to protect the  
‘community from further simflar conduct. It serves  
  
a thre  
  
fold purpose (1) punitive, (it) deterrent  
and (iii) protective, That is why this Court in  
  
Bachan Singh’s ca  
  
observed that when the question  
of choice of sentence is under consideration the  
court-must not only look to the crime and the  
victim but also the circumstances of the criminal  
and the impact of the crime on the community.  
untese the nature of the crime and the  
  
circumstances of the offender reveal that the  
  
criminal ie a menace to the society and the  
sentence of life imprisonment would be altogether  
inadequate, the Court should ordinarily impose the  
1  
  
1 punishment and not the extreme punishment of  
death which should be reserved for exceptional  
  
cases only.”  
  
In Mithu v. State of Punjab? the constitution  
  
Bench, held:-  
  
“The gravity of the offence furnishes the  
guidelines for punishment and one cannot determine  
how grave the offence is without having regard to  
‘the circumstances in which it was committed, the  
motivation and its repercussions. The legislature  
  
cannot make relevant circumstances irrelevant,  
  
  
Page 54:  
deprive the courte of their legitimate jurisdiction  
to exercise their discretion not to impose the  
death sentence in appropriate cases, compel them to  
shut their @  
  
to mitigating circumstances and  
inflict upon them the dubious and unconscionable  
duty of imposing a preordained sentence of death.  
Equity and good conscience are the hallmarks of  
  
justice”.  
  
In Kehar Singh v Ini i ont similar  
rinciples are reiterated and it is further observed “it is a  
  
ruesome murder committed by the accused who was employed  
  
curity guard to protect the Prime Minister. It is one of  
he rarest of the rare cases in which extreme penalty is  
  
alled for".  
  
The aforesaid principles have been approved in many  
  
ater cases’.  
  
1.08. ‘The campaign against capital punishment no doubt  
tas gained momentum in recent years, In 1962, a resolution  
  
tas moved in the Lok Sabha for the abolition of ca  
  
wunishment. The Government assured the House to refer the  
water to the Law Commission of India and consequently the  
fatter was referred to the Law Commission. The Law  
jommigsion after considering the matter thoroughly, felt thet  
  
In the particular circumstances existing in India, it cannot  
  
  
Page 55:  
risk the experiment of abolition of capital punishment. In  
  
its 35th report the Commission has elaborately dealt with the  
  
retention of death penalty and ultimately observed as under:  
  
“The issue of abolition or retention has tc be  
decided on a balancing of the various arguments for  
and against retention. No single argument for  
aboTition or retention can decide the issue, In  
arriving at any conclusion on the subject, the need  
for protecting society in general and individual  
  
human beings must be borne in mind.  
  
It is difficult to rule out the validity of the, or  
the strength behind many of the arguments for  
abolition. Nor does the Commission treat Tightly  
the argument based on the irrevocability of the  
sentence of death, the need for a modern approach,  
the severity of capital punishment and the strong  
feeling shown by certain sections of public opinion  
  
in stressing deeper questions of human value  
  
Having regard, however, to the conditions in Indi  
  
to the variety of the social upbringing of its  
inhabitants, to the disparity in the level of  
  
morality and education in the country, to the  
  
vastness of its area, to the diversity of its  
  
3 for  
  
population and to the paramount  
  
  
Page 56:  
maintaining law and order in the‘ country at the  
present juncture, India cannot risk the experiment  
  
of capital punishment.  
  
Arguments which would be valid in respect of one  
area of the world may not hold good in respect of  
another ares, in this context. Similarly, iF  
abolition in some parts of India may not make a  
  
material difference, it may be fraught with serious  
  
consequences in other parts.  
  
On a consideration of a1] the issues involved, the  
  
Commission is of the opinion that capitat  
  
Punishment should be retained in the present state  
  
of the country,  
  
3,08. However, the Law Commission has recommended that  
children below 18 years of age at the time of the commission  
of the offence should not be sentenced to death. The  
Criminal Procedure Code, 1973 made a further progress in the  
direction of liberalisation. The shift towards  
liberalisation in imposing life imprisonment as against death  
ntence in capital offences has also been highlighted by the  
  
Supreme Court in Sarweshwar Prasad Sharma V. State of M,P.8  
  
‘in the following words:  
  
  
  
Page 57:  
“The recent benign direction of the penal law is  
towards life sentence as a rule and death as an  
‘exception, awarding of which must be accompanied by  
  
recorded reasons.”  
  
Thus in cases where there are extenuating circumstances, the  
accused is punished with life imprisonment. In the absence  
t of rere  
  
of extenuating: circumstances and in the “ra  
  
cases", capital punishment is awarded.  
  
3.07 We have carefully considered the question from  
everal angles after making comparative study of the law in  
other countries and after examining various judgments 111  
gate rendered by the apex court, we reiterate the  
recommendation of Law Commission in its 36th Report for  
retention of the capital punishment, but to be awarded in  
  
accordance with the guidelines laid down by the Supreme  
  
court.  
PART ~ IE  
Specification of categories of awarding  
death penalty = not necessary  
3.08. We now turn to examine the second issue arising out  
  
[Proposed sub-section (2) of Section 302 occurring under  
  
[Clause 125 of the 111, namely, whether categories of cases  
  
  
Page 58:  
should be specified for awarding death penalty. The  
  
categories specified in the proposed sub-section (2) of  
  
Section 302 is not exhaustive.  
  
Section 354(3) of the Code of Criminal Procedure  
  
1973, as hai mandates the judge called  
  
upon to exercise his choice between the alternative sentence  
  
of death and imprisonment for life to state “special ri  
  
Jone  
for the death sentence awarded. The provision, in the tight  
of its legislative history, in unmistakable terms makes it  
evident that imprisonment for life ie a rule in case of  
offences punishable with death or in the alternative  
imprisonment for life and it 1s only in exceptional cases,  
for special reasons to be recorded, death sentence can be  
imposed. But it is nowhere indicated in either the Code of  
Criminal Procedure or any other statutory instrument as to  
what constitutes the so-called “special reasons” justifying  
imposition of sentence of death. This is, again, entirely  
  
left to the discretion of the court.  
  
3.09, Before the amendment of section 367(5) of the  
Criminal Procedure Code, 1898 by Act 26 of 1955, the normal  
rule was to impose the sentence of death on a person  
  
ntence was  
  
convicted of a capital offence and if a lessor  
  
6, the court was required to record reasons in  
  
to be impo:  
  
id amendment, the provision in  
  
writing. gut by the afor  
  
Section 367(5) was omitted and consequently, the court became  
  
  
  
Page 59:  
ther death sentence or life imprisonment and  
  
free to award  
  
no longer death sentence was the rule and Tife imprisonment  
  
the exception.  
  
Interpreting the liberal provieion brought about by  
elation, Justice Krishna Iyer in E,Annamms v, State of  
Andhra Pradesh'®, observed:  
  
“That the disturbed conscience of the tate on the  
  
vexed question of legal threat of the life by way  
  
of death sentence has set to express itself  
Jegislatively. The screen of tendency being  
towards cautious, partial abolition and a retreat  
  
from total retention.”  
  
Justice Krishna Iyer, admitted the impossibility to  
  
“feed into a judicial computer” all the situations warranting  
  
life imerisonment or death sentence  
  
He, however, suggested factors to be taken into  
consideration while making a choice between death sentence  
land life imprisonment ike personal, social, motivational and  
  
physical circumstances: horrendous features of the crime:  
  
hapless and helpless state of the victim, intense suffering  
  
endured by prison, torture, and excruciating death penalty  
  
hanging over head of the convict consequent of the legal  
  
proce:  
  
  
  
Page 60:  
‘one can also visualise even in cases falling under  
the proposed sections 302(2)(a) or (b) (¢) or (d), that there  
may be extenuating, mitigating circumstances which may deter  
imposition of death sentence, and thus again the principle  
laid down in Jagmohan Singh v. State of UP?’ and Bachan  
  
2 as discussed  
  
singh’s ca lier cones into play. Thie te  
even statutorily recognised in section 354(3) of Code of  
criminal Procedure 1973 which enjoins that the scope and  
concept of mitigating factors in the area of death penalty  
must receive a liberal and expansive construction by the  
  
courts, Therefore, in spite of the proposed amendment in the  
  
1p 8111 under section 302(2), the situation will be  
  
virtually be the same.  
  
3.10. Therefore, wo are of the view that it ie better to  
retain section 302 as it 1 instead of reading any  
Mmitations into the same regarding imposition of death  
sentence for the reason that it ie impossible to put them in  
any straight jacket for the reason that what circumstances  
  
make a case a ‘rarest of rare one’, cannot be fixed by way of  
  
@ legal provision, Therefore, we would not recommend any  
change in section 302 as is proposed in clause 125 of the  
ein.  
PART = ILE  
Proposed clause (3) of section 202 in IPG Bill  
Bett, Wo now turn to examine the sub-clause (3) of clause  
  
| 125 of the B11 which provid  
  
  
  
Page 61:  
“187:  
  
“Where a person while undergoing sentence of  
imprisonment for life ie sentenced to imprisonment  
  
for an offence under clause (@) of sub-secton (2),  
  
such sentence shall run consecutively and not  
  
concurrently.”  
  
jons of the  
  
We wish to examine the aforesaid provi:  
  
Bi11 in the light of recent legislative and judicial policy.  
  
Under the Code of Criminal Procedure, 1898 if a  
  
ntence of transportation for life for  
  
person undergoing the  
ntence was to commence at the  
  
another offence, the latter  
expiration of the sentence of transportation to which he was  
  
the court directed that the  
  
previously sentenced, unter  
Subsequential sentence of transportation was to run  
  
ntence of transportation.  
  
concurrently with the previous  
  
3.12. It was in 1958 that section 307 of the Code of  
Criminal Procedure of 1898 was replaced by a new section 397  
by Amendment Act 26 of 1955. Under the new sub-section (2)  
of section 397 which came into force on January 1, 1986 if a  
Berson already undergoing a sentence of imprisonment for life  
was sentenced on a subsequent conviction to imprisonment for  
  
ntence had to run concurrently with  
  
life, the subsequent  
the previous sentence. Section 427(2) of the Code of  
  
Criminal Procedure, 1973 is to the same effect.  
  
  
  
Page 62:  
Further in Bhagirath v. Delhi Administrationi\*,  
  
(Conetitution Bench), it was held:  
  
“Graver the crim  
  
longer the sentence, greater the  
need for set offs and remissions. Punishments are  
  
no longer retributory. They are reformative.”  
  
We feel that clause (3) of section 302 of IPC 8117  
providing for running of sentence of Tife imprisonment.  
consecutively instead of concurrently, will be a retrograde  
stop in accord with deterrent and retributive theories of the  
past as observed by the Supreme Court. In view of this, we  
do not approve the proposed clause (3) of section 302 in the  
  
inl.  
  
Punishment for murder by life convict  
  
3.13, Section 303 of the Indian Penal Code provid  
  
“whoever being under sentence of imprisonment of  
  
life commits murder shall be punished with death.”  
  
The Law Commission in its 42nd Report did not  
\*Fecommend any change in the aforesaid section since it is  
  
“very rarely applied”.  
  
  
Page 63:  
‘The Supreme court in Mithy v. State of Puniab'+  
declared that the aforesaid provisions of Section 303 violate  
also the  
  
the guarantee of equality contained in Article 14  
right conferred by Article 21 of the Constitution. Chinnappa  
  
Reddy J in his concurring opinion observed:  
  
“it is impossible to uphold section 303" as valid  
  
as it excludes judicial discretion. He added that  
  
“the ecales of justice are removed from the hands  
  
of the judge as soon as he pronounced the accused  
  
quilty of the offence. So final, so irrevocable  
and 0 irrestitutable (sic irresuscitable) is the  
sentence of death that no law which provides for it  
without involvement of the judicial mind can be  
said to be fair, just and reasonable. Such a law  
necessarily be stigmaticed as arbitrary and  
oppressive. Section 303 i euch a Yaw and 1t must  
go the way of all\*.  
  
Clause 126 of the B111 seeks to omit Section 303 of  
  
[the Indian Penal Cod  
  
(14. We have carefully considered the various provisions  
  
lor the e111 and feel that if section 303 12 omitted the  
Becond part of Section 307 which provides that “when a person  
Btrending under this Section 1s under sentence of  
  
[Prrisonment for life, he may, if hurt is caused, be punished  
  
  
  
Page 64:  
ne analogy and  
  
ained, on the  
  
with death” cannot be  
principles which hold section 303 to be arbitrary and  
oppressive and violative of Articles 14 and 21 of the  
constitution. We accordingly recommend deletion of the  
  
eecond part of Section 307.  
  
  
Page 65:  
10.  
”  
12.  
13,  
  
4,  
  
EQOTNOTES  
1973(2) SCR 641  
AIR 1980 Sc 898  
1983(3) sco 470  
1983(3) sce 6  
19@3(2) scc 277  
1988 sco 389  
See K.J.Chatteries v. State (1994(2) SCC p.220),  
Bhairen Singh v. Skate of Raiasthan (1994(2) sco  
p.467). Gauri Shankar & Ore, v. State of Tamit  
Nady (JT 1994(3) sco 54); 1 war  
  
v. State of Maharashtra (1994(3) Crimes 197).  
  
AIR 1977 SC 2423  
  
Balwant Singh v. State of Puniab, AIR 1978 SC 280;  
AIR 1978 SC 2196; AIR 1977 SC 2423.  
  
AIR 1974 SC 799  
  
1973 (2) SCR 541  
  
1980(2) Sco 684  
  
1995(2) Sco 580  
  
(1983) 2 sco 277.  
  
  
Page 66:  
CHAPTER ~ IV  
  
CRIMINAL CONSPIRACY  
  
So Tong as a crime generates in the mind, it is not  
punishable. Thoughts even criminal in character often  
involuntary are not crimes. But when the thoughts take the  
concrete shape of an agreement to do cr cause to be done an  
jMegat? act. or an act which 1s not ‘llega! by i11eea1 means  
then even if nothing further is done, the agreement is  
designated as criminal conspiracy. However, the proviso to  
section 120A makes it clear that except on agreement to  
commit an offence, a bare agreement of the aforementioned  
nature would not amount to an offence of criminal conspiracy  
unless some act besides the agreement is done by one or more  
  
parties to the @reement. in pursuance thereof. It te the  
  
next overt step which may otherwise be of a oreparatory  
nature such as buying arms to implement the criminal  
conspiracy that makes it punishable. The act of purchasing  
farms pursuant to an agreement to do an illegal act or an act  
shich is not itlegal by {1 Jegal means shat? constitute an  
  
offence. Section 120A of the 1PC is as follow:  
  
“1208. Definition of criminal conspiracy.- when  
  
two or more persons agree to do, or cause to be  
  
done,  
  
  
Page 67:  
(1) an 111egat act, or  
  
(2) an act which te not 111  
  
by  
  
illegal means, such an agreement is designated a  
  
criminal conspiracy:  
  
Provided that no agreement except an agreement to  
commit an offence shall amount to @ criminal  
conspiracy unleas some act besides the agreement ie  
done by one or more parties to such agreement in  
  
pursuance thereof,  
  
Explanation- It is immaterial whether the {1legal  
act is the ultimate object of such agreement, or ie  
merely incidental to that object.”  
  
4.02. The offence of criminal conspiracy wae introduced  
  
in the Penal Code by the Criminal Law Amendment Act of 1913,  
  
Which inserted a separate Chapter VA consisting of only two  
  
sections 120A and 1208. Despite the obvious and considerable  
‘overlapping between the provisions of these two sections and  
the provisions governing abetment of an offence by conspiracy  
contained in chapter V, the legislature did not think {t  
Pecessary to amend the earlier Chapter in any way. Now  
  
¢ not some act or illegal omission takes place, he  
  
whether  
  
is guiity of a criminal conspiracy as soon as he becomes a  
  
| Party to the agreement to commit the offence and is  
  
  
Page 68:  
=: 64  
  
punishable under sub-section (1) or sub-section (2) of  
to  
  
fon 1208, as the ci  
  
may be. So far as conspiraci  
  
sect  
  
rious offences are concerned, section 1208 (1) pute  
  
commit  
& party to the conspiracy in exactly the same position as en  
abettor of the offence for the purpose of punishment.  
Although it ie theoretically possible to charge a person with  
conspiring to commit an offence even where no overt act in  
pursuance of the conspiracy has been done, it seldom, if  
ever, happens that two or more persons are prosecuted for a  
criminal conspiracy merely on the strength of evidence  
  
proving the agreement and nothing more  
  
4.09. However, that may be, there 1 no doubt that, after  
the enactment of Chapter VA, abetment by conspiracy 16 of  
Tittle practical use, and ie redundant ae a criminal lew  
concept. It may be noted, that in England there is no  
  
separate mention of conspiracy as a species of abetment.  
  
Therefore, in the 42nd report, the Law Commission hi  
recommended the omission of the second paragraph of section  
107 and a1] subsequent references in Chapter ¥ of the Code of  
  
abetment by conspiracy.  
  
‘one is struck by the wide eweep of the definition  
  
of criminal conspiracy in section 120 A. It covers not only  
  
mont to commit an offence, but aleo (i4) an  
  
(1) an agr  
agreement to commit an illegal act, and (111) an agreement to  
commit an act not illegal by illegal means. This distinction  
  
between achievement of any object by illegal means must  
  
  
Page 69:  
involve the doing of something illegal, i.e. the committing  
  
of an illegal act, The act which is an offence punishable  
under sub-section (i) or sub-section (2) of section 1208 is  
  
being a party to a criminal conspiracy as defined in section  
  
120A. In other words, now criminal conspiracy i¢ not an  
‘offence ancillary to another offence, but an independent and  
  
substantive offence by itself.  
  
4.04, In fact, the modern crime of conspiracy is almost  
  
ult of the manner in which @ conspiracy was  
  
entirely the ri  
  
treated by the Court in the doctrine of conspiracy which dose  
  
not commend itself to jurists of civil law countries, despite  
  
universal recognition that an organised society must have  
legal weapons for combating organteed criminality. Most  
other countries have devised what they consider more  
discriminating principles upon which to prosecute criminal  
  
gangs, secret associations, and subversive syndicates.  
  
According to the definition of criminal conspiracy  
two or more persons musi:be parties to such an agreement and  
‘one person alone can never be held guilty of criminal  
  
son that one cannot conspire  
  
conspiracy for the simile re  
with oneself.! The offence of criminal conspiracy consists in  
the very agreement between two or more persons to commit &  
  
criminal offence irrespective of the further consideration  
  
whether or not those offences have actually been committed.  
  
  
Page 70:  
The very fact of the conspiracy constitutes the offence and  
it is immaterial whether anything has been done in pursuance  
  
of the unlawful agreement.?  
  
Thus, even if there 49 concurrence in the intention  
of the accused persons to do an illegal act it is not enough  
for the purpose of establishing a charge of conspiracy. In  
other words, where there ie no meeting of minds there cannot  
  
be a conspiracy.?  
  
4.05. It {8 not an ingredient of the offence under thie  
  
section that all the parties should agree to do a single  
  
iVlegal act. It may comprise the commission of a number of  
  
acts. Where the accused are charged with having conspired to  
do three categories of illegal acts, the mere fact that all  
‘of them could not be convicted separately in respect of each  
of the offences has no relevancy in considering the question  
whether the offence of conspiracy has been committed. They  
can all be held guilty of the cffence of conspiracy to do  
iVegal acts, though for individual offences al] ef them may  
  
not be T1ab1 ary that each member of the  
  
Tt i8 not ne  
  
conspiracy must know all the details of the conspiracy.’ An  
  
offence under this section consists in the conspiracy without  
any reference to the subject-matter of the conspiracy and it  
  
is not necessary to establish the offence that there must  
  
have been definite purpose about which the parties are  
  
negotiating or which they have conspired.  
  
  
  
Page 71:  
4,06. The Law Commission in ite 42nd report wae of the  
view that there te neither theoretical jurisdiction nor  
practical need for punishing agreements to commit petty  
  
In practice, few  
  
offences or non-criminal illegal act:  
private prosecutione of such petty conspiracies are  
sanctioned by the State government or its officers under the  
criminal Procedure Code. Therefore, it was recomended that  
  
section 120A which defines criminal conspiracy should be  
  
avised as follows:  
  
"120A. When two ore more persons agree to  
commit an offence punishable with death,  
imprisonment for 1ife or tmorisonment of either  
  
‘sor upwards or  
  
description for & term of two ye  
  
to cause such an offence to be committed, the  
  
agreement is designated a criminal conspiracy.  
  
Explanation 1. = It i immaterial whether the  
  
te object of  
  
commission of the offence is the ulti  
  
such agreement or is merely incidental to that  
  
object.  
  
Explanation 2. - To constitute @ criminal  
conspiracy, it is not necessary that any act or  
411ega) omission shall take place in pursuance of  
  
the agreement.”  
  
  
Page 72:  
4.07. It may be mentioned that the IPC (Amendment) 8111,  
  
not indici  
  
any change about the  
  
1978 is silent and ha  
offence of criminal conspiracy. @ut the then Law Commission  
in its 42nd report was of the view that criminal conspiracy  
  
for petty offences should not be covered under thi  
  
chapter  
  
In this context, it is submitted that a petty offence may  
  
lead to an offence of serious nature and it would not be  
  
y  
  
to separate such crimes as per doctrine of Res-aestae.  
  
Moreover, the crime of criminal conspiracy differs  
from other offences. In other offences, the intention to do  
a criminal act is not a crime in itself until something is  
done amounting to the doing or the attempting to do some act  
to carry out the intention. On the other hand conspiracy  
consists simply in the agreement or confederacy to do some  
act, no matter whether jt is done or not. Further, section  
1208 does not just contain a principle of constructive  
Viability, therefore, if an accused is found guilty of  
criminal conspiracy, may be for a patty offence, he should be  
convicted under this section.  
  
4.08. Therefore, it is suggested not to disturb this  
  
Section as the same is working well.  
  
“1208. Punishment of criminal conspiracy.- (1)  
Whoever is a party to a crimina} conspiracy to  
commit an offence punishable with death,  
  
imprisonment for life or rigorous imprisonment for  
  
  
Page 73:  
a term of two years or upwards, shall, where no  
‘express provision ie made in this Code for the  
puntehment of such a conspiracy, be punished in the  
  
same manner as if he had abetted such offence.  
  
(2) Whoever is a party to a oriminal  
conepiracy other than a criminal conspiracy to  
  
‘id shall be  
  
‘commit an offence punishable as afors  
punished with imprisonment of either description  
for a term not exceeding six months, or with fine  
  
or with both."  
  
4,09. This section is the supplement of previous section  
and provides punishment for the crime committed thereof. It  
will be noticed that, for the purposes of puniehment, section  
  
1208 divides criminal conspiracies into two classes. Where  
  
the conspiracy is to commit a serious offence, i.e. an  
offence punishable with imprisonment for two years or  
upwards, a party to the conspiracy is punished in the same  
  
manner if he had abetted the offence. in the second  
  
category there are included conspiracies to commit any other  
offence (including offences punishable only with fine) and  
conspiracies to commit i1legal acts other than offences; and  
for these, sub-section (2), provides a uniform punishment,  
viz. imprisonment of either description upto six monthe or  
  
fine or both. Recognising that it would be dangeroue to  
  
ve these petty conspiracies to be alleged before courte by  
  
any person so provision 1s made in the Criminal Procedure  
  
  
Page 74:  
code, that no court shall take cognizance of them except upon  
complaint made by order or under authority from the State  
  
Government or some officer empowered in this behalf.  
  
In other words, the punishment for a criminal  
  
conspiracy 1s more severe if the agreement is one to commit a  
  
erave offence; and less severe if agreement is to commit an  
act, which although illegal, is not an offence punishable  
with death, imprisonment for life or rigorous imerisonment  
  
This section applies where no  
  
for more than two yé  
offence has been actually committed by the members of the  
conspiracy who are parties during the period of conspiracy  
  
ction.  
  
for which they are charged under this  
  
4.10, In England the law of conapiracy 1s not 80 widely  
drawn as in India. Conspiracy ie @ common law misdemeanour  
punishable with fine or imorisonment at the discretion of the  
court, except in the case of murder where by statute there te  
‘a maximum punishment of ten years. It consists in the  
agreement between two ore more persons to effect some  
  
While the commission of a crime, even a  
  
="unlawfut” purpo:  
an unlawful  
  
non-indictable crime, is naturally recognised  
Purpose, there are no precise or clear rules in regard to  
non-criminal unlawful purposes of an indictable conspiracy.  
Conspiracies to defraud, to commit a tort involving malice,  
or to commit a public mischief, are, broadly speaking,  
  
indictable. A conspiracy to commit or induce breach of  
  
contract is probably not indictable at the present day.  
  
  
Page 75:  
4.11, Though the present sub-section (1) of section 1208  
only refers to offences punishable with rigorous imprisonment  
for a term of two years or upwarde, the offences which are  
punishable with imprisonment of either description for a term  
  
of two years or upwards, should be brought within the  
  
definition of criminal conspiraci The second Explanation  
  
as suggested by the Law Commission in ite 42nd Report {e on  
‘the same Tines as the explanation to section 121A; though not  
jrable to have it in thie  
  
strictly nec ms di  
  
ry, it  
  
section also.  
  
Under sub-section (1) of seation 1208 a party to a  
  
criminal conspiracy is liable to be punished in the same  
manner as if he had abetted the intended offence. This means  
that, in every case of conspiracy, the appropriate provision  
contained in Chapter V will have to be found out and applied.  
  
It would obviously be preferable to make the section  
  
1#-contained.  
  
Therefore, in the 42nd report, the then Law  
  
Commission had recommended that section 1208 should be  
  
revised as follows:  
  
  
Page 76:  
“1208. Whoever is a party to a criminal  
conspiracy shall, where no express provision is  
  
made for the punishment of such a conspiracy, ~  
  
a) if the offence which it is the object of  
the conspiracy to commit or cause to be committed  
is committed in pursuance of the conspiracy, be  
  
punished with the punishment provided for that  
  
offence; and  
(b) if the offence is not committed in  
pursuance of the conspiracy, be punished with  
imprisonment of any description provided for that  
offence for a term which may extend to one-half of  
the longest term provided for that offence, or with  
such fine as is provided for that offence, or with  
  
both.”  
  
4.12, Tt appears that the Law Commission made the  
recommendation for the revision of section 1208 with the  
intention to make the section self-contained. aut the  
recommendation will make the language ambiguous. Therefore  
this recommendation could not find a place in the IPC  
  
(Amendment) 8111, 1978 which is silent about this section.  
  
  
Page 77:  
This section, no doubt, ie very important as it  
provides a punishment only for criminal conepiracy where no  
‘express provision ie made in the Code for the punishment of  
such a conspiracy. Where, therefore, a criminal conspiracy  
amounts to an abetment under section 107, it ie unnecessary  
to invoke the provisions of thie section, because the code  
has mage specific provisions for the punishment of euch «  
conepiracy. Now it fe well settled that a criminal  
  
conspiracy 1s a separate offence, punishable separately from  
  
the main offence.\*  
  
413. In the light of the above discussion, we are of the  
view that our recommendation in the matter is same for both  
the sections for the reasons mentioned earlier. In other  
words, there is no need to disturb Chapter VA as it worke  
  
like residuary provision for the crime of conspiracy.  
  
  
Page 78:  
‘FOOT NOTES  
1 Topandas Ve. state, (1986), 26 scr eat.  
a Noor Mohammad Ve. State, (1970) sccters) 274.  
a Union of India Ve. Prafulla K. Sonal, (1978)  
  
sec(ors) 609.  
  
“a Major €@ State. AIR 1981 sc 1762.  
5. Datmia R.K. Ve. Delhi Administration (1962) Ir  
er.t.J 908,  
  
Mat (1) crimes 63. Also. “Hazard  
  
h Chand, 1  
  
Baria,1928, 30 Cr. L.J 473.  
  
  
Page 79:  
CHAPTER - V  
  
FINANCIAL SCAMS  
  
CONSPIRACY TO DEFRAUD PUBLIC INSTITUTIONS  
  
There are various serious economic offences which  
  
are damaging the society. It is needless to say that the  
motive for commission of these crimes is the greed of the  
person and the method employed is nothing short of fraud.  
  
The Union Government appointed a Committee known as  
  
“santhanam Committee"! in the year 1962 which, after a  
careful survey, categorised @ kinds of Socto-Economic  
  
offences such as, inter alia ,  
  
1) Offences calculated to prevent or obstruct the economic  
  
development of the country and endanger its economic health,  
  
44) Evasion and avoidance of taxes, and  
  
414) Profiteering, black-marketing and hoarding.  
  
5.02 Recently, various sort of scams in various fields,  
e.9., banks, hospitals, investment of public shares involving  
crores of rupees have eurfaced. In Shiv Sagar Tiwari v.  
Union of India,? the Supreme Court has also observed that  
  
there are various scams in the country.  
  
5.03 Apparently, financial scams have the genesis of  
  
committing fraud with the public money running into croré  
  
and crores of ups The nation’s economy ie put in  
  
  
  
Page 80:  
doldrums when such colossal amount is pocketed in by vested  
interests through fraudulent means leaving the poor citizen's  
hard earned money which he invested for his prosperity or to  
  
cater for his evenings of his Tife, for being siphoned off by  
  
few culprits. Above all, if such culprits go scot free after  
  
even a protracted trial, or are met with punishmente eimi lar  
to an accused of fraud of insignificant amount ae compared to  
those of scams, people tart loosing faith in the  
Jurisprudence of justice prevailing in the country. This has  
  
the direct inroad into the confidence of democratic eet up of  
  
‘the country and the very existence of an orderly society is  
  
In A.Javaram and Another v. State of Andhra  
  
the Supreme Court deprecated that officials  
  
put at stak  
  
Pradesh  
  
involved in a fertilizer scandal of large scale went scot  
free because of tardy inquiries made by State Police. It  
  
held  
  
“It is really unfortunate that in fertilizer  
  
scandal of such magnitude, appropriate steps at the  
  
right time had not been taken and for want of  
  
convincing and unimpeachable evidence, the accused  
  
who were government officials have been acquitted  
by giving them benefit of doubt. It appears to us  
that such large scale scandal in transporting  
imported fertilizer would not have occurred if  
larger number of government officials and other  
than prosecuted were not involved. It is not  
unlikely that the superior government officials had  
  
also played a vital role in perpetrating the said  
  
  
Page 81:  
fraud or concealing the same. The tardy enquiries  
made by the State Police thereby necessitating an  
enquiry by the CBI at a belated stage is only a sad  
commentary on the efficiency of the police  
  
administration...  
  
In Delhi Development Author it: Skinner  
4 Senatruction Company (p) Ltd.# , it was held:-  
  
The concept of corporate entity was evolved to  
‘encourage and promote trade and commerce but not to  
commit i1legalities or to defraud people. where,  
the  
  
fore, the corporate character is employed for  
  
the purpose of committing {llegality or for  
defrauding others, the court would ignore the  
corporate character and will look at the reality  
behind the corporate veil so as to enable it to  
pass appropriate orders to do justice between the  
parties concerned...”  
  
“We feel impelled to make a few observations.  
What happened in this case is illustrative of what  
is happening in our country on a fairly wide scale  
in diverse forms. Some persone in the upper etrata  
(which means the rich and the influential class of  
the society) have made the ‘property career’ the  
sole aim of their life. The means have become  
  
fers  
  
ant - in a land where its greateat son born  
  
in this century satd “means are more important than  
  
  
Page 82:  
the ende". A sense of bravado prevaile; everything  
can be managed; every authority and every  
institution can be managed, All it takes is to  
“tackle” or “manage” it in an appropriate manner.  
They have developed an utter disregard for Taw nay,  
a contempt for it; the feeling that law is meant  
  
for lesser mortals and not for them. The courte in  
  
the country have been trying to combat thie trend,  
  
with some success as the recent events show. But  
  
how many matters can we handle. How many more of  
  
such matters are stil] there? The real question te  
  
how to swing the polity into action, a polity which  
has become indolent and soft in ite vitale? can  
the courts alone do it? Even ao, to what extent,  
in the prevailing state of affairs? Not that we  
wish to launch upon @ diatribe againet anyone in  
particular but Judges of thie court are also  
permitted, we presume, to ask in anguish, “what  
  
have we made of our country in less than fifty  
  
years"? Where has the respect and regard for law  
gone? And who is responsible for it?”  
Thus no more support is required to conclude that  
  
scams of diverse forms cited above, have to be very  
  
effectively tackied.  
  
5.04 Needless to say that that most of the frauds  
  
generally are not committed individually but with the aid and  
  
‘stance of others in an organised manner.  
  
  
  
Page 83:  
5.05 The Law Commission (UK) in its report\* on “criminal  
Law: conspiracy to defraud” (LAW COM No.228) has considered  
  
conspiracy to defraud, which remains a common law offenc  
The scope of conspiracy to defraud is extremely wide. As its  
  
name indicates, it cannot be committed by one person acting  
  
alone.  
  
The Commission (UK) explained the conspiracy to  
  
defraud as follows:  
  
“2.7 The decision of the Court of Appeal in Moses (1991)  
  
Crim LR 617, provides @ recent itlustration of the  
  
use of conspiracy to defraud to deal with an  
  
agreement to deceive a public official into acting  
contrary to his public duty, The defendants  
  
conspired to facilitate applications for work  
  
permits by immigrants who were barred by a passport.  
stamp from obtaining such permits. The deception  
consisted in the withholding from departmental  
supervisors of information about the applicants,  
which increased the TikeTihood of a national  
  
‘insurance number being issued to them.  
  
2.8 The extent to which a conspiracy to ca  
  
non-economic loa extends beyond thie  
  
tegory fo  
unclear, The authorities conflict. different  
  
Judicial views were expressed in the House of Lorde  
  
  
  
Page 84:  
3.18.  
  
observations of the Supreme Court made in Skippers cai  
  
clearly  
  
in Withers (1975 AC 842). the narrower view, that  
  
this type of case was the only form of non-economic  
  
joss covered by conspiracy to defraud, was also  
  
‘expressed by Lord Diplock in Scott (1975) Ac 819,  
  
841 B-c, The wide views expressed in Welham  
(1961) AC 103) by Lord Radcliffe and Lord Denning  
were specifically approved by the Privy Counei] in  
Wai Yu-teang ((1992)1AC 269,) in which Lord Goff of  
Chieveley, who delivered the Board’s opinion, said  
that the cases concerned with public duties did not  
comprise a special category, but merely exemplified  
the general principle that conspiracy to defraud  
need not involve an intention to cause economic  
  
loss  
  
There is, however, a significant distinction in  
  
this respect between conspiracy to defraud and a  
  
conspiracy to commit an offence. where the parti  
to a statutory conspiracy have carried out their  
scheme, they are not normally charged with  
conspiracy as well. On the other hand, whether or  
not the plan of conspirators to defraud hee  
succeeded, they can be convicted only of  
  
conspiracy.  
  
Analysis of above position particularly the  
  
indicate a need to carve out an aggravated form of  
  
  
Page 85:  
conspiracy particularly in cases when fraud is committed  
against Government, Public Sector Banks or Public Financial  
  
Institutions, local authority, or any State Undertaking or  
  
the offence wi  
  
Agency. In the Skipper’s cai committed by  
the Skipper’s Construction Company (P) Ltd. in collusion  
  
this problem can  
  
with ODA officials, We are of the v.  
be tackled if the following new namely Section  
12088, is inserted in Ipc:-  
  
"12088. Criminal conspiracy to defraud public  
  
institution, ete.  
  
When two or more persons agree to defraud a public  
institution or a local authority, fraudulently or  
dishonesty, to cause, or cause to be done.  
wrongfu? gain to themselves or to any person, or to  
cause or cause to de done, wrongful Toss to such  
public institution or local authority, such an  
agreement is designated a criminal conspiracy to  
defraud and whoever is a party to such criminal  
conspiracy shall be punished with imprisonment for  
life or with imprisonment of either description for  
a term which may extend to ten years, and shall  
also be liable to fine:  
  
Provided that no agreement shall amount  
to a criminal conspiracy to defraud unless some act  
besides the agreement is done by one or more  
  
ment in furtherance thereof  
  
parties to such agr  
  
  
Page 86:  
-: 82 or  
  
Explanation - Any bank or financial organisation or  
  
company or body or body corporate, which is owned  
  
or controlled by the Government, shall be deemed to  
be a ‘public institution’ for the purposes of thie  
  
ction”.  
  
  
  
Page 87:  
committee on Prevention of Corruption, 1962 Report,  
headed by Chairman shri K.Santhanam  
  
1996(9) SCALE 680.  
  
1998(4) SCALE 393.  
  
AIR 1996 SC 2008.  
  
The Law Commission (UK) (LAN COM. —\_NO.22  
  
‘criminal Law Conspiracy to defraud’ Item 5 of the  
Fourth Programme of Law Reform: Criminal Law.  
  
Supra note 4.  
  
  
Page 88:  
CHAPTER ~ VI  
  
ATTEMPT - INSERTION OF NEW SECTIONS 120 ¢ & 120  
BY WAY OF NEW CHAPTER VB IN THE BILL  
  
The IPC (Amendment) 8111, 1978 made a provision for  
  
under Clause 45. Aleo by mistake, claui  
  
@ this new Chapt  
48 to 51 of the Bi11 were incorporated in this Chapter which,  
1  
  
in fact, constitutes an independent chapté + Chapter vi  
  
a8 per IPC contents. Therefore, this new Chapter i confined  
  
to sections 120 C and 120 D only which are dealing with the  
  
“Attempt”.  
  
6.02 The subject of attempt has already been  
  
incorporated in the last Chapter i XXIII (containing only  
  
one section 511 of the Code as a residuary provision.  
However, in the Bi11 it is inserted just after Chapter vA,  
Perhaps, in view of the importance of the concept and its  
close connection with abetment and conspiracy. In the BiTl,  
Section 511 has been omitted by ineerting this new chapter  
  
which has only two sections, namely sections 120 ¢ and 120-0.  
  
It may be mentioned that numerous sections in the  
  
while defining the acts which constitute particular  
  
offence, place attempts to do those acts at par with doing  
the acts themselves and make’ them punishable to the same  
  
extent. Such provisions of the Code may be summed as under:-  
  
  
Page 89:  
(1) Under section 121, with which the next chapter  
  
begins, waging war against the Government of India  
  
and any attempts to wage such war are both capital  
  
of enc  
  
(2) Section 124, attempt wrongfully to restrain the  
  
President and other high officials with intent to  
  
or refrain from  
  
induce or compel them to exerci  
  
exercising any of their lawful power  
  
(3) Section 125, attempt to wage war against the  
Government of an Asiatic Power in alliance or at  
  
peace with the Government of India.  
  
(4) Under section 130, one who attempts to rescue a  
prisoner of war is punished to the same extent as  
fone who actually rescues a prisoner of war.  
  
If one were to construe section 611 strictly ae a  
  
residuary provision, none of the ideas contained therein  
  
would be applicable for interpreting what constitutes an  
  
attempt to wage war under section 121 or an attempt to rescue  
  
ction 130. These sect fons.  
  
a prisoner of war under  
  
themselves do not furnish any guidance for this purpose.  
  
(3) Section 153A - attempt to promote feelings of  
  
enmity, etc.  
  
  
Page 90:  
(6) Section 161 - attempt by a public servant to  
  
obtain an illegal gratification.  
  
(7) Section 162 - attempt to obtain a gratification  
in order by corrupt or i11ega? means to influence «  
  
public servant.  
  
(8) Section 163 - attempt to obtain a gratification  
for exercising personal influence over a public  
  
servant.  
  
(9) Section 165 - attempt by public servant to  
obtain a valuable thing without consideration from  
a person concerned in proceeding or busines  
  
transacted by the public servant.  
  
(10) Section 196 - attempt to use as true, evidence  
  
known to be fa  
  
(11) Section 213 - attempt to obtain @  
gratification to screen an . offender = from  
punishment.  
  
(42) Sections 239 and 240 - attempt to induce «  
  
person to receive a counterfeit coin.  
  
  
Page 91:  
(13) Section 241 - attempt to induce a person to  
  
receive as genuine a counterfeit coin which, when  
  
the offender took it into his possesion, he did  
  
not know to be counterfeit.  
  
(14) Section 307 which, without using the word  
attempt except in the margin, defines attempt to  
  
murder.  
  
(15) Section 308 which similarly defines attempt to  
  
commit culpable homicide not amounting to murder.  
  
In the preceding last two sections, the attempt  
consists in doing any act with such intention or knowledge,  
and under such circumstances, that if the actor by that act  
caused death, he would be guilty of murder or, a8 the case  
nay be, culpable homicide not amounting to murder. The  
  
hypothetical condition if he by that act; caused death is not  
where the act done was physically  
  
easy to apply inc  
incapable of causing any one’s death. The question whether  
there could be an attempt to murder not falling within  
section 307, or an attempt to commit culpable homicide not  
falling within section 308, but punishable as such under  
section 511, the residuary section, is not entirely  
theoretical as it has been raised before the courts fairly  
  
often.  
  
(46) Section 309 - attompt to commit suicid  
  
  
  
Page 92:  
6.04  
  
(17) Section 385, 387 and 389 - attempt to put a  
  
person in fear of injury or accusation in order to  
  
commit extortion.  
  
(18) Section 391 - conjoint attempt of five or more  
  
persons to commit a dacoity.  
  
(19) Sections 393, 394 and 398 - attempt to commit  
  
ropbery.  
  
(20) Section 460 - attempt by one of many joint  
house-breakers by night to cause death or grievous  
  
hurt.  
  
Finally, there is section §11 which runs as unde!  
  
"511. Punishment for attempting to commit offences  
punishable with imprisonment for life or other  
  
{mprisonment.- Whoever attempts to commit an  
offence punishable by this Code with imprisonment  
for life or imprisonment, or to cause such an  
offence to be committed, and in such attempt dose  
net act towards the conmiesion of the offence  
shall where no express provision is made by this  
Code for the punishment such attempt, be punished  
with imprisonment for any description provided for  
  
the offence, for a term which may extend to  
  
  
  
Page 93:  
one-half of the imprisonment for life or, as the  
  
case may be, one-half of the longest term of  
  
imprisonment provided for that offence, or with  
such fine as is provided for the offence, or with  
  
both.  
  
T1lustrations  
  
(a) A makes an attempt to steal somo jewels by  
breaking open a box and finds, after @0 opening the  
box, that there {8 no Jewel in it. He has done an  
act towards the commission of theft, and therefore  
  
js guilty under this section.  
  
(b) A makes an attempt to pick the pocket of Z by  
thrusting his hand into 2's pocket. A fails in the  
attempt in consequence of Z’s having nothing in hie  
  
pocket. A is guilty under this section.”  
  
6.05 However, the Law Commission in its 42nd report  
(para 5.43) found that the language used in section 511 is  
ction 309  
  
very confusing, It was also mentioned that  
defines attempt to commit suicide in the same way “Whoever  
Attempts to commit suicide and does any act towards the  
commission of such offence...” Therefore, to constitute a  
criminal attempt two requirements are apparently to be  
  
satisfied, namely  
  
  
Page 94:  
(i) The offender must first attempt to commit an  
offence, which presumably he can only by doing some act, but  
  
that apparently is not sufficient.  
  
(ii) He must, in doing that act which ie the  
attempt, alo do something else towarde the commission of the  
  
offence.  
  
6.08 The crux of the problem of defining attempt seems  
  
to lie in stating with precision a test as to when the act  
  
has travelled beyond the preparatory stag  
  
There are two tests to determine the  
  
ttempt”  
  
(4) First test is of proximity. The much-quoted  
dictum is that acts remotely leading towarde the commission  
of an offence are not to be considered as attempts to commit  
it, but acte tmmedtatoly connected with it are, states the  
  
Proximity rule.  
  
In other word:  
  
+ to constitute an attempt, the act  
done must be immediately, and not merely remotely, connected  
  
with the commission of the offence,  
  
(it) Secondly, test is known as the test of last  
act. Acts remotely leading towards the commission of the  
  
offence are not to be considered  
  
attempts to commit it,  
  
but acts immediately connected with it are.  
  
  
  
Page 95:  
But this test of last act has, however, obvious  
flaws. It cannot be applied to a situation where the accused  
  
intends to accomplish his object by degrees, such  
  
+ murder  
by slow poisoning. Moreover, the act which remains to be  
done by the offender pute poison in a glass and aleo intends  
to pour wine in it, but the wine is actually poured by the  
  
\ victim, Hare the “last act” which the offender wished to do  
was not, in fact, done by him, but that need not prevent the  
  
act from being an attempt.  
  
6.07 In order to constitute an attempt, the acts of the  
‘accused must be such as to clearly and unequivocally indicate  
of themselves, the intention to commit the offence:  
  
Salmond, whose view ie most frequently quoted, observed, (1)  
  
“an act done with intent to commit a crime is not a  
  
3 it is of such a nature as  
  
criminal attempt unt  
to be in itself sufficient evidence of the criminal  
intent with which it is done. A criminal attempt  
je an act “which shows criminal intent on the face  
of it....An act.....which in its own nature and on  
  
the face of it innocent annot be brought  
  
within the scope of criminal attempt by evidence  
aliunde as to the criminal purposes with which it  
  
is done.”  
  
  
Page 96:  
6.08 Tt is, therefore, suggested that a practical test  
for the actus reus in attempt is that the prosecution must  
prove that the steps taken by the accused must have reached  
  
the point when they themselves clearly indicate what was the  
  
end towards which they were directed. In other words, the  
steps taken must themselves be sufficient to show, prima  
  
facie, the offender's intention to commit the crime which he  
  
ys charged with attempting.  
  
It is also to be mentioned that the actus reve  
necessary to constitute an “attempt” is complete if the  
accused does an act which is a step towards the commission of  
the specific crime, which is immediately and not merely  
remotely connected with the commission of it, and the doing  
of which cannot reasonably be regarded as having any other  
purpose other than the commission of specific crime.  
  
e The Supreme Court had expressed its view regarding  
  
an attempt as under =  
  
“A person commits the offence of attempt to commit  
a particular offence when (i) he intends to commit  
that particular offence; and (11) he, having made  
preparations and with the intention to commit the  
offence, does an act towards its commission; such  
an act need not be the penultimate act towards the  
  
commission of that offence but must be an act  
  
during the course of committing that offen:  
  
  
  
Page 97:  
Eminent Juriat Sir James Stephen, in his Dig  
  
Criminal Law, Article 50, defines an attempt as follows:  
  
“an act done with intent to commit that crime, and  
forming part of a series of acts which would  
constitute its actual commission if it were not  
interrupted. The point at which such a series of  
acts begins cannot be defined, but depends upon the  
  
circumstances of each particular case.”  
  
6.03, After having a glance of juristic interpretation of  
  
an “attempt”, it is crystal clear that for an “attemot™, @  
  
futile act of the accused is a must. Had he been successful,  
  
the same would have been a crime. But his failure for the  
same converts the crime into an “attempt”. Similar approach  
was taken in both the illustrations of section 511, where it  
is stated that a person during the futile act # guilty of  
  
attempting to commit theft.  
  
8.10 The Law Commission in its 42nd report had  
  
recommended that the last Chapter of the Code containing only  
  
section 511 be omitted and, instead, a new chapter v-|  
  
entitled “Attempt” consisting of two sections 120¢ and 1200  
  
bo inserted after Chapter VA a  
  
  
Page 98:  
120¢. Definition of attempt:- A person  
  
attempts to commit an offence punishable by thie  
  
code, when ~  
  
(a) he, with the intention or knowledge requisite  
  
for committing it, does any act towards its  
  
commission;  
  
(B) the act so done is closely connected with, and  
  
Proximate to, the commission of the offence  
  
(c) that act fails in ite object because of facts  
Rot known to him or because of circumstances beyond  
  
his control.  
  
Llustrations  
  
@ A, intending to murder z, buys a gun and  
Joads it. A is not yet guilty of an attempt to  
commit murder. A fires the gun at Z, he is guilty  
  
of an attempt to commit murder.  
  
(b) A, intending to murder Zz by poison,  
Purchases poison and mixes the same with food which  
remains in A's keeping; A is not yet guilty of an  
  
the food on 2!  
  
attempt to commit murder. A plai  
  
  
  
Page 99:  
table, or delivers it to Z's servant to place it on  
2's table. A is guilty of an attempt to commit  
murder.  
(e) with intent to steal another person's  
box, while travelling in a train, takes a box and  
  
gets down. He finds the box to be his own. AS he  
has not done any act towards the commission of the  
offence intended by him, he is not guilty of an  
  
attempt to commit theft.  
  
«a A, with intent to steal jewels, breaks  
open Z's box, and finds that there is no Jewel in  
it. Ae hie act failed in {ts object because of  
facts not known to him, he is guilty of an attemot  
  
to commit theft.”  
  
“1200. Punishment for attempt: Whoever ie guilty  
  
of an attempt to commit an offence punishable by  
this Code with imprisonment for life or with  
imprisonment for a specified term, shall, where no  
express provision {6 made by this Code for the  
punishment of such attempt, be punished with  
‘imprisonment of any description provided for the  
  
offence, for a term which may extend to one-half of  
  
‘the imprisonment for life, or, ag the case may be,  
  
  
  
Page 100:  
-2 96m  
  
on  
  
half of the longest term of {mertsonment  
provided for that offence, or with such fine as is  
provided for the offence, or with both.”  
  
6.14 In view of this definition of attempt, which could  
be applied in relation to murder and culpable homicide not  
amounting to murder without any serious difficulty, the Law  
“commission in 42nd report did not consider it necessary to  
have a different formula to define attempt to commit either  
  
Tt was also recommended to revise  
  
Sections 307 and 308 as follows:  
  
"207 Attempt to murder:~ Whoever attempts to commit  
murder shail be punished with rigorous imprisonment  
for a term which may extend to ten years, and shall  
also be Tiable to fine; and if hurt je caused to  
  
any person by such act, the offender may -  
  
(a) if under sentence of imprisonment for life, be  
  
punished with death; and  
  
{b) in any other case, be punished with  
  
imprisonment for life  
  
"308. AtRempt to commit. culpable homicide:Whoever  
attempts to commit culpable homicide not amounting  
to murder hall be punished with imerisonment of  
  
either description for a term which may extend to  
  
  
Page 101:  
or with both; and tf  
  
three years, or with ff  
hurt ie caused to any person by euch act, shall be  
puntehed with imprisonment of either description  
for a term which may extend to seven years, or with  
  
fine, or with both.  
  
THustratton  
  
A, on grave and sudden provocation, fires a piste?  
  
at under such circumstances that if he thereby  
  
caused death he would be guilty of culpable  
homicide not amounting to murder. A has committed  
  
the offence defined in this section.”  
  
6.12 In the IPC (Amendment) 8111, 1978, the  
recommendations made by the Law Commission were incorporated  
  
with minor amendments Tike -  
  
(4) Tustration (¢) to sectton 120C was dropped  
  
and {Tlustration (d) was made {71ustration (c).  
  
(41) At the end of section 207 (b), the following  
  
words were inserted:  
  
“or with rigorous imprisonment for a term which may  
  
‘extend to ten years.”  
  
  
Page 102:  
In the B11, the texts of sections 120-c and 120-0  
  
runs as under.  
  
120-G, Definition of Attempt:- A person attempts to commit  
  
an offence, when -  
  
(a) he, with the intention or knowledge requisite  
  
Yon;  
  
for committing it, does any act towards ite commi  
  
(b) the act so done ie elo:  
  
ly connected with, and  
  
proximate to, the commission of the offence; and  
  
(c) that act fails in its object because of facts  
Rot known to him or because of circumstances beyond hie  
  
contro.  
  
(a) A, intending to murder 2, buye a gun and loads it.  
A is not yet guilty of an attempt to commit murder. A fires  
the gun at Z, he is guilty of an attempt to commit murder.  
  
(b) intending to murder Z, by poison, purchases  
  
poison and mixes the  
  
me with food which remains in A‘e  
  
keeping; A io not yet guilty of an attempt to commit murder.  
  
  
Page 103:  
A places the food on Z's, table, or delivere it to Ze  
servant to place it on 2's table. A ts guilty of an attempt  
  
to commit, murder.  
  
(e) A, with intent to steal jewels, breaks open Z's  
box, and finds that there 1s no jewel in it. As hie act  
jfatted in its object because of facts not known to him, he ie  
  
guilty of an attempt to commit theft.  
  
1200. Punishment of attempt: Whoever ie guilty of an  
attempt to commit an offence punishable with imprisonment for  
life or with imprisonment for specified term, shall, where no  
‘express provision is made for the punishment of such attempt,  
be punished with imprisonment of any description provided for  
  
the offence, for a term which may extend to one-half of the  
  
imprisonment for life or, as the case may be, one-half of the  
longest term of imprisonment provided for that offence, or  
  
with such fine as is provided for the offence, or with both”  
  
6.13 After examining the suggestions of the Law  
Commission in its 42nd report, judicial as well as academic  
  
interpretation pertaining to “attempt”, it has become cl  
  
r  
that there are four distinct stages through which an act  
  
ordinarily passes before it becomes a crime punishable by the  
  
code. The first stage is described as intention to commit a  
  
crime {.0.'mens rea’. The intention, however, criminal  
  
  
  
Page 104:  
= 100 :~  
  
itself, without anything more ie not punishable. The next  
stage is described as preparation and excepting a few  
  
‘exceptional categories, preparation is not punishable.  
  
Section 611 of the Code deals with the third stage,  
namely, the stage of attempt. One who commits offence firat  
  
intends to commit an offence, then prepares for committing  
  
offence and then attempts to commit offence and when  
  
1d to have committed an offence. This  
  
succeeds, he is  
  
ction BIT.  
  
third stage 1s made punishable under  
  
No doubt that this ie a general and residuary  
provisicn dealing with attempts to commit offences not made  
punishable by any other specific sections, It makes  
punishable all attempts to commit offences punishable with  
imprisonment and not those punishable with death only.  
  
An “attempt” fe made punishable, because every  
  
‘attempt’, although it faile in achteving the result, must  
create alarm, which of itself fs an injury, and the guilt of  
  
the offender is the same as if he had succeeded. Guilt must  
  
be related to injury in order to justify punishment; when the  
injury is not as great as of the act committed, only upto  
half the punishment prescribed is awarded. However,  
preparation to commit an offence is not punishable except  
when the preparation is to commit offences under section 122  
(waging war againet the Government of India) and section 399  
  
\_\_ (preparation to commit dacoity).  
  
  
  
Page 105:  
m2 100 re  
  
6.14 It is very vital to note that the offence of an  
“attempt” leaves untouched attempts to commit, or to cause to  
  
be committed offences under special or local laws which also  
  
are not offences under the Code. No criminal liability can  
be incurred under the Code by an attempt to do an act which,  
  
if done, will not be an offence under the Code.  
  
To constitute @ crime of an attempt under the Code,  
the offender's intention to commit a complete offence ia  
necessary. The very wording in section 511 that “To cause  
Such an offence to be committed” wil? include an attempt to  
  
abet an offence. So it has been held that it is not legally  
  
possible to attemot the abetment of an offence, the abetment  
of an offence being itself an offence. A common form of such  
attempt is the soliciting of another to commit an offence.  
The act done towards the commission of the offence consists  
in the solicitation itself. rt will not affect the offence  
  
‘though the person solicited declines the persuasion.  
  
Similarly, the wording of section 511 “dows any ect  
towards the commission of the offence” are algo vital words.  
“Intention alone, or intention followed by preparation are  
not sufficient to constitute an attempt. aut intention  
  
followed by preparation, followed by any act done towarde the  
  
commission of the offence, are sufficient.” In each of the  
two illustrations given under thie section there is not.  
  
merely an act done with the intention to commit an offence,  
  
  
Page 106:  
102  
  
which act 1s unsuccessful because it could not possibly  
result in the completion of the offence, but an act 1s done  
  
“towards the commission of the offence,” that ie to say, the  
offence remains incomplete only because something yet remains  
to be done, which the person intending to commit the offence  
{8 unable to do by reason of circunatances independent of hie  
  
own volition, Thus, in i}lustrations  
  
(a) the act of breaking open the box is done  
towards the commission of the theft of the jewels.  
The theft itself, that ie, actual renoval of the  
Jewels, stil] remains to be done and it remains  
undone only because it turns out that there are no  
  
jewels to remove.  
  
(b) Z fails to comply with the essentials of theft  
  
simply because there is nothing in the pocket.  
  
For the conviction under thie section it ie not  
necessary that the accused should complete the atage in the  
actual offence except the final stage. it ie enough if in  
the attempt he did any act towards the commission of the  
  
offence.  
  
  
Page 107:  
=1 103 =  
  
6.18 Section 511 was never meant to cover only the  
  
penultimate act towards completion of an offence and not the  
preceding acts. ‘If such acts are done in the course of the  
attempt to commit the offence, then they are done towards ite  
commission.  
  
It appears from the above discussion, that it would  
  
be most difficult to frame a  
  
definition which shall lay down for all  
preparation to commit an offence ends and where attempt to  
commit that offence begins. The question is not one of mere  
  
proximity in time or place. Many offences can easily be  
  
conceived where, with all necessary preparations made, a long  
interval will stil] elapse between the time when the attempt  
to commit the offence conmences and the time when it {8  
completed. The offence of cheating and inducing delivery 18  
fan offence on point. The time that may elapse between the  
moment when the preparations made for committing the fraud  
fare brought to bear upon the mind of the person to be  
deceived and the moment when he yields to the deception  
practised upon him may be a very considerable interval of  
time. There may be the interposition of inquiries and other  
‘acts upon his part. The acts whereby those preparations may  
  
in point of  
  
be brought to bear upon the mind may be sever:  
number, and yet the first act after preparations completed  
  
will, if eriminal in itself, be beyond all doubts, equally an  
  
attempt with the ninety ninth act in the series.  
  
  
Page 108:  
Moreover, the definition in section 511 uses the  
word ‘attempt’ in a very large sense; it seems to imply that  
  
such an attempt may be made up of a series of acts, and that  
  
any one of those acts done towards the commission of the  
offence is itself punishable, and, though the sections does  
  
not use the words, it can mean nothing but punishable as an  
  
attonot. It does not say that the last act which would form  
Sno rina part of an attempt in the larger sense is the only  
act punishable under the section. The words, “whoever  
  
attempts to commit an offence” obviously have the larg  
  
meaning to cover any act, done towards the commission of the  
  
offence. The term ‘any act’ excludes the notion of the final  
  
act.  
  
6.16 In the light of above discussion, it ie very clear  
  
that section 511 is working well and there is no need to omit  
Fite. therefore, no need to introduce a new chapter v-B  
Containing sections 120 ¢ and 1200. Nonetheless, if need  
  
be, the language of section 511 may be amended.  
  
  
  
Page 109:  
2 108  
  
Russell on Crime, (1964) Vol.1 page 184. (Edited  
by Dr.Turner).  
  
Abhayanand Miehra Vs. State of Bihar, (1982) 2 SCR  
2ar.  
  
  
  
Page 110:  
=: 106 i=  
  
CHAPTER = VIT  
  
OFFENCES AGAINST THE STATE  
  
Offences against the State are included in this  
  
chapter. It has the flavour of the approach of Empire  
wduilders. The chapter has undergone very little amendment  
save for the introduction of section 121A by the Act xXVII of  
1870 and section 124A by the Act IV of 1898. These  
additional sections were introduced to plug a loophole  
because of an inadvertent omission of @ special provision for  
the punishment of the offence of abetment of rebellion, to  
protect at the relevant time the Empire builders. However,  
0 Government can afford to allow a threat to develop to its  
  
There is no country  
  
existence by a small coterie of people  
on earth in which there ts not a small minority group  
commonty known as terrorists which is always up in arms  
against the established Government The secessionist  
activity has reared its ugly head even in countries which  
  
red to have an integrated personality. It has become  
  
app  
necessary to provide permissible norms of political  
  
behaviour, violation of which must be punishable.  
  
This chapter provides for punishment of those  
engaged in waging a war against the Government of India,  
conspiracy to commit such offences, preparation to commit  
  
Such offences such as collecting arms etc. with intention of  
  
  
  
Page 111:  
waging war and conc  
  
ling the extetence of a design to wage  
war. Section 124A which provides punishment for sedition was  
described by the Father of the Nation as the prince amongst  
the political sections of the Indian Penal Code, It may be  
mentioned that such renowned personalities as Mahatma Gandhi,  
‘the Father of the Nation, and Bal Gangadhar Tilak were also  
tried and punished during the heyday of British Empire under  
  
jection 124 A.  
  
The line dividing preaching disaffection towards  
  
the Government, and legitimate political activity in a  
democratic set-up cannot be neatly drawn. Where legitimate  
political criticism of the Government in power ends and  
disaffection begins, cannot be ascertained with precision.  
  
dition  
  
The demarcating line is thin and wavy. what w  
  
against the Imperial rulers may today pass off ae a  
legitimate political activity in a democratic set-up under  
our libertarian Constitution. | The interpretation of the  
relevant sections in this chapter will have to be moulded  
  
within the letter and spirit of the Constitution.  
  
In this chapter, the first five sections deal with  
  
what may be called acte of high treason waging war against,  
  
the Government of India, conspiring to wage war, preparation  
  
to wage war, facilitating of euch activities and overawing  
  
the Government or the Head of State by force.  
  
  
  
Page 112:  
7: 108 =  
  
Next section is the punishing one of sedition,  
  
tions aim at preserving friendly relations with  
  
Then thr  
foreign States by punishing those who attempt to prejudice  
those relations by unwarranted aggressive action. the tact  
three sections of the chapter, which relate to prisoners of  
war and state prisoners, are not of much practical importance  
during peace time, especially since the category referred to  
  
QP “State prisoners” during the British regime no longer  
existe, having given place to the less dignified appellation  
  
of “persons under preventive detention”.  
  
7.02 With this chapter begins the definition of  
particular offences which the makers of the code thought fit  
to include in it. Despite the targe number - about 400 - of  
such offences for which the punishment is prescribed in the  
  
Code, the compilation cannot in the nature of things be  
  
exhaustive. Other types of wrongful, injurious or.  
  
octal conduct made punishable under other special Jaws  
  
qf anti  
like Army Act, Air Force Act, and 80 on. The Law Commieeion  
  
in ite 42nd report observed that while an enlargement of the  
‘Scope of the Penal Code by including therein some of the  
offences now punishable under a apectal or local Taw may be  
desirable, it is neither necessary nor practicable to attempt  
to make the Code an absolutely complete: law of crime.  
However, in brief some of these epecial Tawa which are  
dealing treason, sedition and other kindred offences againet  
  
the security and integrity, may be mentioned as under ~  
  
  
  
Page 113:  
=: 108 =  
  
(1) The Foreign Recruitment Act, 1874  
  
(1i)The Indian Criminal Law Amendment Act, 1908  
  
(iii) The Official Secrets Act, 1923  
  
(iv) The Criminal Law Amendment Act, 1938  
  
(vy) The Criminal Law Amendment Act, 1961  
  
(vi)The Unlawful Activities  
  
(Prevention)  
  
Act, 1967; and so on  
7.03 It is clear that treason, sedition and cognate  
  
offences which may be classified offences against the  
  
security of the state, are dealt within codes of other  
  
In  
  
countries in much greater detail than in our Penal Cod  
particular, it i@ noticeable that treason and treasonabie  
activities are spelt out elaborately, and not limited to  
waging war against the Government and assaulting the head of  
State. on a preliminary study of the problem it appears that  
the strengthening, consolidation and reviaion of some of the  
provisions of this important branch of criminal law would be  
necessary. However, in the Amendment @i11 only two changes  
are proposed, namely, insertion of a new section 123A and  
  
substitution of section 124A and changing the nature of  
  
ntence to rigorous imprisonment under sections 122 and 123.  
  
Having regard to the importance of the Penal provisions in  
  
  
Page 114:  
a2 110  
  
this regard, we would also examine the question whether any  
  
changes are necessary in these existing provisions, namely,  
  
ction 121 and 121A.  
  
7.08 Section 121 prescribes the punishment, namely death  
or imprisonment for life, for the principal offence of waging  
war against the Government of India and for abetting that  
offence or attempting to commit that offence. Neither 42nd  
  
feoore nor 1P¢ (Amencment) 8111, 1978 has suggested any  
  
change.  
  
Therefore, this section does not require any  
change.  
7.05 Section 121A provides as under:—  
  
"121A. Conspiracy to commit offences punishable by  
  
ction 121- Whoever within or without India  
  
to commit any of the offences punishable  
  
conspir  
by section 121, or conspires to overane, by means  
of criminal force or the show of criminal force,  
the Central Government or any State Government,  
shal] be punished with imorisonment for life, or  
with imprisonment of either description which may  
extend to ten years, and shall also be liable to  
  
fine  
  
  
  
Page 115:  
Explanation: To constitute @ conspiracy under this  
  
section, it is not necessary that any act, or  
  
iVega! omission shall take in pursuance thereof.  
  
ection 121A punishes two different kinds of  
conspiracy. The first is a conspiracy to wage war against  
the Government of India, and the second is a conspiracy to  
overane by force the Central Government or any State  
Government. In view of section 120 8, there is hardly any  
need for a separate section to deal with the first kind of  
conspiracy. If any such conspiracy actually results in the  
waging of war against the Government of India, or even an  
attempt to wage such war, the conspirators will be punishable  
with death or imprisonment for life under section 121 read  
with section 120 8; and the conspiracy is infructuous, they  
  
will be punishable with half the longest term of imprisonment  
  
provided for the offence, that ten years, which may be  
  
ufficient.  
  
7.08 on reading, it looks difficult that purpose is  
served at present by the words “within or without India\*  
which appear at the beginning of the section. When it was  
enacted in the last century, . the extra-territorial  
application of the Code was limited during colonial days, to  
offences committed by Government servants in the territory of  
  
any Indian State. 8y referring to conspiracies entered into  
  
“without @ritish India”, the section was apparently intended  
  
to cover British subjects and not foreigners.  
  
  
Page 116:  
In view of sections 1 and 4 of the Code as they  
stand at present, it 18 fairly clear that section 121A cannot  
apply to the acts of foreigners committed outside India, It  
was aluo conetdered by the Law Commission in its 42nd report  
that the words “within or without India” are of no practical  
  
consequence and should be omitted.  
  
1.07 In the 42nd report, it was also recommended to  
extend the idea to overawe by criminal force or by show of  
criminal force, the Parliament of India or the legislature of  
any State in addition to overawing the Central Government or  
any State Government as an offence of conspiracy. At  
present, the award of simple imprisonment is permissible  
  
under the section, which in view of the gravity of the  
  
offence is not appropriate. It wae accordingly proposed by  
  
then Law Commission that section 121A may be revised as  
  
follows  
  
“121A. Qonspiracy to overawe the Parliament or  
Governmentof India or the Leaielature ar  
Government.\_of any \_State:Whoever conapires to  
  
‘overawe, by means of force or show of force, the  
Parliament or Government of India, or the  
  
Legislature or Government of any State, shall be  
  
  
Page 117:  
punished with imprisonment for life or with  
  
rigorous imprisonment for a term which may extend  
  
to ten years, and shall also be liable to fine.  
  
Explanation:- To constitute a conspiracy under this  
section, it ig not necessary that any act or  
iVlegal omission shall take place in pursuance  
  
thereof.”  
  
rved in its 42nd report that  
  
The Law Commission obs  
  
since this offence is akin to the one described in section  
124, it would be logical to bring it after the three sections  
dealing with waging war and the proposed new section about  
  
assisting India’s enemies, and to number it 1208.  
  
7.08 Pertaining to the second kind of conspiracy (para  
05 above), in the 42nd report it was recommended that section  
121A may be amended but in the IPC (Amendment) 8111 1978, the  
same was not accepted. Also in the proposed amendment, the  
idea to overawe by criminal force as an offence was extended  
to the Parliament or the State's On the other hand, the  
original text of section 121A (which was inserted by the Act  
3 of 1981) provides general and wide scope to cover all typet  
of conspiracy for the offence mentioned in section 121 of the  
  
Code. Needless to mention that the words,  
  
  
Page 118:  
arr aes  
  
“of conepires to overawe, by means of criminal  
force or the show of criminal force the central  
Government or any State Government, shall be  
  
punished..."  
  
are sufficient to cover the words, “Parliament or the Stats  
Legislature” as the legislative is an essential part/wing of  
‘avery democratic government. About the said recommendations  
  
nothing has been mentioned in the Amendment B11.  
  
7.09 Having earnestly considered in the aforesaid manner  
  
these provisions, namely, section 121A, we are of the view  
  
that no changes are necessary and we endorse that the absence  
of any major policy changes in the 8111 is of no consequence.  
Likewtee, having examined sections 121, 122, 123 and alao  
having noted that the Law Commisaion in its 42nd Report did  
  
sections will remain as  
  
not suggest any amendment, and thes:  
they are except that the words “imprisonment of either  
description” being substituted with “rigorous {merieonment”.  
  
7.10 The Law Commission in ite 42nd Report recommended  
  
for inserting a new section 123A and the same finds place in  
the Amendment 8111. The New Section 123A as recommended by  
the Law Commission reads as follows:  
  
“1298. Assisting India’s enemies: whoever  
  
assists in any manner an enemy at war with India,  
  
or the armed forces of any country againat whom the  
  
ae  
  
  
  
Page 119:  
118  
  
armed forces of India are engaged in hostilities,  
whether or not a state of war existe between that  
country and India, ehall be punished with rigorous  
imprisonment for @ term which may extend to ten  
  
years, and shall also be liable to fine.”  
  
The above recommendation for inserting a new  
section 123-A got a place in the IPC (Amendment) 8111. But  
in the Bi11, an Explanation was added in the proposed  
  
section. The said Explanation may be  
  
“Explanation - In this section -  
  
(i) “Armed forces of India” means the military,  
  
any other armed  
  
naval and air forces, and includ.  
forces of the Union;  
  
(44) “enemy” includes any person or country  
committing external aggression against the Union,  
  
‘or any person belonging to such country.”  
  
ra Proposed section 123A in the Bill is bt  
ion in its 42nd Report. An  
  
recommendation of the Law Commi  
Explanation 1s, however, added in the Bi11 which explains the  
‘expressions ‘armed forces of India’ and ‘enemy’ in the  
context of the offence covered by the main section 123A a  
reconmended by the Law Commission. Therefore, there is no  
  
harm in having this Explanation.  
  
  
  
Page 120:  
7.12 The existing section 124A defines the offence of  
edition. Despite the umbra of repression which a mention of  
  
this section is likely to evoke in one's mind, it is a  
  
provision which has to find a place in the Penal Code for the  
reason that every State, whatever its form of Government, has  
to be armed with the power to punish those who by their  
  
conduct, jeopardise the safety and stability of the stati  
  
disseminate such feelings of disloyalty as have the tendency  
  
to lead to the disruption of the State or to public disorder.  
  
dition is a crime  
  
1.13 In England, the crime of  
  
rly allied to that of treason, and it  
  
against society n  
  
treason by @ short interval. The objects  
  
frequently prece:  
  
of sedition generally are to induce discontent and  
  
insurrection and stir up opposition to the Government, and  
bring the administration of justice into contemet; and the  
  
dition 1@ to incite the people to  
  
very tendency of  
insurrection and rebellion. Sedition hae been described as  
disloyalty in action and the law considers as sedition all  
those practices which have for their object to excite  
  
discontent or dissatisfaction, to create public disturbance  
  
or to lead to civil war; to bring into hatred or contempt the  
  
Sovereign or the Government, the laws or Constitution of the  
  
realm, and generally all endeavours to promote public  
  
disord  
  
  
  
Page 121:  
ar It may be observed that criticism on political  
natters is not of itself seditious. The test is the manner  
in which it is made. Candid and honest discussion is  
yermitted. The law only interferes when the discussion  
passes the bounds of fair criticism. More especially will  
chis be the case when the natural consequence of the  
  
prisoner’s conduct is to promote public disorder.  
  
Tt may be mentioned that the definition of sedition  
in the existing section 1244 is limited to exciting  
  
ffection towards the Government established by law.  
  
citing disaffection towards the Constitution or Parliament  
  
or the administration of justice is not mentioned as a  
  
ditious activity, On the other hand, while promotion of  
  
public disorder in some form or other is considered an  
assential ingredient of seditious conduct in England, this  
  
idea is not brought out in the wording of section 124A.  
  
1.18 In view of the controversy which has raged round  
section 124A for all this time, it is clearly necessary to  
revise the formulation of the offence so as to make it @  
patently reasonable restriction under Article 19 (2). The  
elements mentioned in this Article which are relevant to the  
offence of sedition are integrity of India, security of the  
State and public order. The section has been found to be  
defective because “the pernicious tendency or intention”  
underlying the seditious utterance has not been expressly  
  
related to the interests of integrity or security of India or  
  
  
  
Page 122:  
of public order. The Law Commission in its 42nd report  
gbserved that this defect should be removed by expressing  
“meng rag” as “intending or knowing it to be likely te  
endanger the integrity or security of India or of any state  
  
‘or to cause public disorder.”  
  
1.16 Another defect already noticed in the definition of  
sedition is that it does not take into account disaffection  
towards (a) the Constitution, (b) the Legislatures, and (c)  
the administration of justice, all of which would be as  
disastrous to the security of the State as disaffection  
towards the executive Government. These aspects are rightly  
emphasised in defining sedition in other Codes and section  
  
124 A should be revised to take them in.  
  
The punishment provided for the offence is very  
odd. It could be imprisonment of life, or else, imorisonment  
upto three years only, but nothing in between. The Law  
Conmission observed that there is aneed to give a firmer  
indication to the Courts of the gravity of the offence by  
fixing the maximum punishment at seven years rigorous  
{mprisonment and fine. That is why, the Law Commission in  
ite 42nd report asked that thie section be revised as  
  
follows:~  
  
“{24. Sedition - Whoever by words, either spoken  
or written, or by signs, or by visible  
  
representation, or otherwise,  
  
  
Page 123:  
excites, or attempts to excite, di  
  
towards the Constitution, or the Government or  
  
Parliament of Indi or the Government or  
  
Legislature of any State, or the administration of  
  
justice, as by law established,  
  
intending or knowing it to be likely thereby to  
endanger the integrity or security of India or of  
  
any State, or to cause public disorder,  
  
shal) be punished with rigorous imprisonment for  
term which may extend to seven years, and shall  
  
also be liable to fine.  
  
Explanation 1: The expression “disaffection”  
  
jneludes feelings of enmity, hatred or contempt.  
  
Explanation 2: Comments expressing disapprobation  
of the provisions of the Constitution, or of the  
actione of the Government, or of the measures of  
parliament or a State Legislature, or of the  
provisions for the administration of justice, with  
a view to obtain their alteration by lawful means  
without exciting or attempting to excite  
disaffection, do not constitute an offence under  
  
this section.”  
  
  
  
Page 124:  
nay Thie recommendation found a place in the TPC  
(Amendment) 8111, 1978 under the heading “sedition”. clause  
48 of the BiIT is substituting a new section for section  
124-A as was originally proposed by the Law Commiasion in ite  
  
42nd report.  
  
1.18 For the reasons discussed above, the section 124-A  
  
(ny be substituted.  
  
1.19 The then Law Commission had suggested in its 42nd  
report that the Code should contain a provision for punishing  
insults to the book of the Constitution, the national flag,  
the national emblem and the national anthem. Burning of the  
copies of the Constitution, desecration of the national flag  
‘or national emblem and offering deliberate insults to the  
national anthem, are not only unpatriotic acts but are also  
  
likely to cause a disturbance of public order, As such, they  
  
pare reprehensible enough to be made offences in the Penal  
  
Code.  
  
Legislative competence of Parliament in the matters  
is derivable from the entry relating to criminal law tn the  
Concurrent List and from the residuary entry in the Union  
List. It could hardly be said that such a provision curtails  
  
striction  
  
the freedom of expression unreasonably, and the ri  
  
ta of public order.  
  
would be clearly in the inter  
  
  
Page 125:  
mp 1atire  
  
7.20 The Law Commission had already racommended that a  
  
new section be inserted after section 124 8, as follow:  
  
= Whoever deliberately fnaults the book of the  
Constitution, the national flag, the national  
emblem or the national anthem, by burning,  
desecration or otherwise, shall be punished with  
imprisonment of either description for a term which  
  
+ or with fine, or with  
  
r  
  
may extend up to three y%  
  
both:  
  
The above recommendation was incorporated in clause  
  
48 of the IPC (Amendment) 111, 1978.  
  
ction 1248 18 also sought  
  
7.21 Under this clause a new  
  
to be inserted. Under this new section, whoever deliberately  
  
insults the Constitution of India or any part thereof, the  
national flag, the national emblem or the national anthem, by  
  
burning the national flag etc., shall be punishable. The Law  
  
commission in its 42nd Report observed that there should be  
provision for punishment for ingults to the Constitution,  
national flag, emblem and the national anthem which may  
include burning of the Constitution and deliberate ineults to  
the national anthem which are unpatriotic. Therefore, they  
  
recommended the insertion of this new section. However, on  
  
  
Page 126:  
the basis of those recommendations, Prevention of Ineults to  
  
National Honour Act, 1971 has been enacted. Therefore, this  
ted again in IPC and the  
  
new section 1248 need not be int  
  
same may be deleted from clause 48 of the B11).  
  
1.22 The existing section 125 reads as under:~  
  
"126. Waging war againet any Astatic Power in  
  
‘alliance with the Government of India - Whoever  
wages war against the Government of any Asiatic  
Power in alliance or at peace with the Government  
of India or attempts to wage such war, or abets the  
waging of such war, shall be punished with  
  
to which fine may be added,  
  
imprisonment for lif  
  
or with imprisonment of either description for a  
term which may extend to seven years, to which fine  
  
may be added, or with fine.”  
  
7.23 Section 125 makes it an offence to wage war against  
the Government of any Asfatic Power in alliance or at peace  
with the Government of India, The reference to ‘Asiatic  
  
Power’ is now meaningless, and the worde “in allfance or” are  
  
unnecessary. It would be sufficient to refer to the  
  
Government of any foreign State at peace with India  
  
The punishment of 11fe Imprisonment for the offence  
is unduly severe; on the other hand, if ever the offence ie  
  
committed, the offender ought not tp be let off with a fine  
  
  
  
Page 127:  
now provided in the section. The Law Commission had  
  
already proposed that the punishment should be imorisonment  
  
of either description not exceeding ten years, and also fin  
  
The section may accordingly be revised as follows:  
  
"128. Wagin Ani for: at  
  
India, ~- Whoever wages war against the  
Government of any foreign State at peace with  
India, or attempts to wage such war, or abets the  
waging of such war, shall be punished with  
jmorisonnent of either description for a term which  
may extend to ten years, and shall also be liable  
  
to fine.”  
  
1.24 The same recommendation was incorporated in the [PC  
  
(Amendment) 8111, 1978. Clause 49 of the 8117 runs as under:  
  
"49. In section 125 of the Penal Code, for the  
words “any Asiatic Power in alliance or at peace  
with the Government of India“, the words any  
  
foreign State at peace with India: shall be  
  
substituted.  
  
Thus the recommendation for reducing the quantum of  
the punishment was not accepted. It may be mentioned that in  
  
cribed “with  
  
the existing provision the punishment is pri  
  
  
Page 128:  
imprisonment for life to which fine may be added, or with  
  
imprisonment of either description for a term which may  
  
extend to  
  
ven ye  
  
When there is already a provision for reducing the  
Punishment, then there is no need to reduce expressly the  
  
upper limit of the punishment.  
  
7.28 In view of the above, section 125 may be amended  
  
Proposed in the IPC (Amendment) 8111, 1978.  
  
  
Page 129:  
CHAPTER-VIIT.  
  
SUICIDE : ABETMENT AND ATTEMPT  
  
Section 306: Abetment of Suicide  
  
Section 306 of the Indian Penal Code penalises  
  
abetment of suicide. It reads as  
  
“308. Abetment of Suicide.- If any person conmits  
  
suicide, whoever abete the commission of auch  
  
suicide, shall be punished with imprisonment of  
  
either description for a term not exceeding ten  
  
years, and shall also be Viable to fine.”  
  
6.02. The constitutionality of section 308 wae challenged  
in smt.Gian Kaur v State of Puniab:! Upholding the  
constitutionality of section 306, the Supreme Court held that  
section 300 enacted a distinct offence which 1s capable of  
  
existence independent of section 309. The Court observed:\*  
  
“section 306 prescribes punishment for ‘abetment of  
suicide’ while Section 309 punishes ‘attempt to  
commit suicide’. Abetment of attempt to commit  
suicide ie outstde the purview of section 308 and  
  
1d with  
  
it 1s punishable only under section 309 1  
  
section 107, IPC. In certain other Jurisdictions,  
  
  
  
Page 130:  
‘even though attempt to commit suicide is not  
penal offence yet the abettor is made punishable.  
‘The provision there provides for the punishment of  
abetment of suicide as well as abetment of attempt  
to commit suicide. Thus even where the punishment:  
for attempt to commit suicide is not considered  
  
desirable, ite abetment ie made a penal offence.  
  
In other words aseteted suicide and assisted  
  
attempt to commit suicide are made punishable for  
  
one in the inte:  
  
cogent ri t of society. Such «  
  
provision ts considered di  
  
fable to also prevent  
the danger inherent in the absence of such a penal  
  
provision.”  
  
8.03. In England and Wales, the Suicide Act of 1961 has  
abrogated the rule of law whereby it is a crime for a person  
to commit suicide (8.1). Section 2(1) of the Act imputes  
  
criminal liability for complicity in another's suicide. It  
  
reads:  
  
"2(1).- A person who aids, abets, counsels or  
  
procures the suicide of another, or an attempt by  
another to commit euicide, shall be Mable on  
conviction on indictment to imertsonment for a term  
  
not exceeding fourteen years.”  
  
  
  
Page 131:  
127  
  
‘11.\_Section 309 - ATTEMPT TO COMMIT SUICIDE  
  
04. Section 309 of IPC punishes attempt to commit  
suicide with simple imprisonment for a term which may extend  
  
to one year or with fine or with both.  
  
8.05. The Law Commission in its Forty Second Report had  
examined whether attempt to commit suicide be retained as a  
penal offence. The Commission referred to the Qharma Sastras  
which legitimised the practice of taking one’s life in  
certain situations? and also referred to the provisions of  
Suicide Act, 1961 in Britain which decriminalised the offence  
of attempt to commit suicide. After examining these views,  
the Commission recommended that section 309 ie harsh and  
  
unjustifiable and it should be repealed.  
  
08. In pursuance of the recommendations of the Law  
  
commiseion, clause 131 of the 111 omits section 309 from  
  
Ipc.  
  
8.07. Subsequently, there have been significant judicial  
developments. The Delhi High Court in State v Sanjay Kumar  
Bhatia’ speaking through Sachar J, as he then was, for the  
Division Bench observed that the continuance of section 309  
is an anachronism and it should not be on the statute book.  
However, the question of ite constitutional validity wae not  
  
considered in that c  
  
  
  
Page 132:  
=: 128 =  
  
@.08. Soon thereafter the Bombay High Court in Maruti v  
Shripati Oubal v State of Maharashtra’ speaking through  
Sawant J., as he then was, examined the constitutional  
validity of Section 209 and held that the section is  
violative of Article 14 as well as Article 21 of the  
Constitution. The Section was held to be discriminatory in  
nature and also arbitrary and violated equality guaranteed by  
Article 14. Article 21 was interpreted to include the right  
to die or to take away one’s life. Consequently it was held  
  
to be violative of Article 21.  
  
8.09. The Andhra Pradesh High Court also considered th  
constitutional validity of section 309 in Chenna Jagadeeswar  
v f\_Anghra Pr -7 Amareshwari J., speaking for the  
  
Division Bench, rejected the argument that Article 21  
includes the right to die. The court also held that the  
courts have adequate power to ensure that “unwarranted harsh  
  
tr  
  
\tmant or prejudice is not meted out to those who need  
care and attention”. The court also negatived the violation  
  
of Article 14,  
  
8.10. The Supreme Court examined the constitutional  
validity of section 309 in P,Rathinam v Union of Indiat with  
  
reference to Articies 14 and 21. The Court considered the  
decisions of the Delhi, Bombay, and Andhra Pradesh High  
  
Courts and disagreed with the view taken by Andhra Pradesh  
  
  
Page 133:  
High Court on the question of violation of Article 21.  
Agreeing with views of the Bombay High Court, the supreme  
  
Court observed:\*  
  
"On the basis of what has been held and noted  
above, we atate that section 303 of the Penal code  
deserves to be effaced from the statute book to  
humanise our penal laws. It is a cruel and  
irrational provision, and it may result in  
punishing a person again (doubly) who has suffered  
agony and would be undergoing ignominy because of  
his failure to commit suicide. | Then an act of  
suicide cannot be said to be against religion,  
morality or public policy, and an act of attempted  
suicide has no baneful effect on society. Further,  
  
suicide or attempt to commit 1t causes no harm to  
  
others, because of which State's interference with  
the personal liberty of the persons concerned is  
  
not called for.  
  
We, therefore, hold that section 308  
violates Article 21, and so, it 18 void. May it be  
said that the view taken by us would advance not  
  
‘only the cause of humanisation, which 1s a need of  
  
the day, but of globalteation also, as by effacing  
section 209, we would be attuning this part of  
  
criminal law to the global wavelength”.  
  
  
Page 134:  
130:  
  
But this view of Supreme Court was overruled by &  
  
larger Bench in Smt, Gian Kaur v. State of Puniab'? wherein  
  
forma J.,(as he then wi  
  
2Rathinam’s ca  
  
) speaking for the Court, held that  
  
was wrongly decided, The Court observed:''  
  
“when a man commits suicide he has to undertake  
certain positive overt acts and the genesis of  
  
those acts cannot be traced to, or be included  
  
within the protection of the ‘right to life’ under  
  
Article 21, The significant aspect of ‘sanctity of  
  
lif  
  
js also not to be overlooked. Article 21 is  
fa provision guaranteeing protection of life and  
personal liberty and by no stretch of imagination  
can ‘extinction of life’ be read to be included in  
  
‘protection of lif  
  
Whatever may be the  
philosophy of permitting a person to extinguish his  
life by committing suicide, we find it difficult to  
construe Article 21 to include within it the ‘right  
to die’ as a part of the fundamental right  
guaranteed therein. Right to life is a natural  
Fight embodied in Article 21 but euicide fe an  
unnatural termination or extinction of life and,  
  
therefore, incompatible and inconsistent with the  
  
concept of ‘right to life’. With respect and in  
  
al] humi  
  
ity, we find no similarity in the nature  
  
of the other righte, such as the right to ‘freedom  
of speech’ etc. to provide a comparable basis to  
hold that the ‘right to life’ also includes the  
  
  
Page 135:  
‘right to die’. With respect, the comparison ie  
inapposite, for the reason indicated in the context  
of Article 21. The decisions relating to other  
fundamental rights wherein the absence of  
compulsion to exercise a right wae held to be  
included within the exercise of that right, are not  
available to support the view taken in P.Rathines  
aus Article 21.  
  
To give meaning and content to the word ‘life’ tn  
Article 21, it has been construed as life with  
human dignity. Any aspect of life which makes it  
dignified may be read into it but not that which  
extinguishes it and is, therefore, inconsistent  
with the continued existence of life resulting in  
  
effacing the right tt  
  
If, The ‘right to die’ if  
  
any, i8 inherently inconsistent with the ‘right to  
  
life’ as is ‘death with life  
  
8.12, On the question of violation of Article 14, the  
Court agreed with the view taken by Hansaria J. in  
B,Rathinam's case.  
  
13. Verma J. further observed that the arguments “on  
the desirability of retaining such a penal provision of  
punishing attempted suicide, including the recommendation for  
its deletion by the Law Commission are not sufficient to  
indicate that the provision is unconstitutional being  
  
violative of Article 14, Even if those facta are to weigh  
  
  
Page 136:  
192 :-  
  
the severity of the provision ie mitigated by the wide  
discretion in the matter of sentencing since there 18 no  
Fequirement of awarding any minimum sentence and the sentence  
of imorisonnent ie not even compulsory. There 1 aleo no  
minimum fine prescribed as sentence, which alone may be the  
Punishment awarded on conviction under Section 309, IPC.  
This aspect is noticed in P.Rathinam for holding that Article  
14 19 not violated.“1  
  
8.14. The Supreme Court's decision in Smt. Gian Kaur has  
thus categorically affirmed that right to life in article 21  
does not include the right to die. Consequently section 309  
which penalises attempt to commit sucide is not  
  
unconstitutional.  
  
8.16. There 18 4 school of thought which advocates the  
decriminalisation of the offence of attempt to commit  
  
suicide. They plead for a compassionate and sympathetic  
  
treatment for those who fail in their attempt to put an end  
to their lives. They argue that deletion of section 309 is  
Rot an invitation or encouragement to attempt to commit  
  
suicid  
  
A person indulges in the act of attempt to commit  
  
suicide for various reasons some of which at times are beyond  
  
hte controv.19  
  
16. On the other hand, certain developments such ae  
  
rise in narcotic drug-trafficking offences, terroriam in  
  
differant parts of the country, the phenomenon of human  
  
  
Page 137:  
=: 133  
  
bombs, etc. have Ted to a rethinking on the need to keep  
attempt to commit suicide an offence. For inetance,  
terrorist or drug trafficker who faile in hie/her attempt to  
consume the cyanide pit] and the human bomb who faite in the  
  
attempt to kill himeelf or her  
  
1f along with’ the targete of  
attack, have to be charged. under section 309 and  
investigations be carried out to prove the offence. these  
groupe of offenders under section 209 stand under « different  
category than those, who due to paychological and religious  
  
Feasons, attempt to commit suictd  
  
3.17, Accordingly, we recommend that section 309 should  
continue to be an offence under the Indian Penal Code and  
  
clause 131 of the 8111 be deleted.  
  
  
Page 138:  
10.  
7  
12.  
13.  
  
FOOTNOTES:  
  
1996 (2) Scale a1.  
  
Ig at 291.  
  
Law Commission, Farty Second Report. para 16.31,  
page 243.  
  
Id, para 16.32, page 243,  
  
(1985) Cri.t.J. 931.  
(1987) Cri. Li. 743.  
  
(1988) Cri. L.J. 849.  
  
(1994) 3 sco a94,  
  
Id at 429,  
  
‘Supra note 1.  
  
Id at 088.  
  
Id at 290.  
  
Justice R.A.Jahagirdar (Retd.),  
Suicide - A Crime or a Gry” (1996).  
  
Attemot at  
  
  
Page 139:  
136  
  
‘CHAPTER-1x  
OFFENCES AGAINST WOMEN AND CHILDREN  
T\_RAPE.  
The Law Commiseion in its Eighty-fourth Report on  
Rane and Allied offences : Some Questiona of Substantive  
  
Law. Procedure and Evidence has defined rape as “the ultimate  
violation of the self. It  
  
8 humiliating event in a  
woman's 1ife which leads to fear for existence and a sense of  
Powerleseness”.1 Other scholars have described rape ae an  
interna? assault or sexual invasion which is characterised by  
  
violent taking away of control over the sexual autonomy of  
  
the woman. Rape is an act of violence affecting the physica’  
  
and emotional integrity and dignity of the viet  
  
9.02. The Law Commission in its Forty Second Report had  
recommended certain changes in Section 375 which deals with  
the offence of rape. The following were the changes  
  
recommended by the Commiasion to Section 376.  
  
Clause ‘Thirdly’ of Section 375 defines sexua  
intercourse as rape with the woman's consent when it has been  
  
obtained by putting her in fear of death or of hurt. The  
  
Commission had recommended that the words “either to herself  
er to anyone else present at the place” be added after the  
  
word “hurt”.  
  
  
Page 140:  
‘On the question of consent, the Commission had  
  
pointed out that section 90 of IPC includes the term “injury”  
which 1e of wider import. Injury includes any injury to  
mind, body, reputation or property. The Commission, however,  
  
did not recommend any amendment on this count.  
  
9.03. ‘The Commiseion also recommended that marital rape  
should be removed from the scope of Section 375 and placed as  
  
‘a separate offence. The Commission observed:\*  
  
“The exception in Section 375 provides that sexual  
  
intercourss  
  
by a man with his own wife, the wife  
not being under 18 years of age is not rape. The  
punishment for statutory rape by the husband ie the  
same when the wife {@ under 12 years of age but  
  
when she is between 12 and 15 years of age the  
  
punishment 1s mild, being imprtaonment upto two  
years, or fine or both, Naturally, the  
  
prosecutions for this offence are very rai  
  
we  
think, it would be desirable to take this offence  
altogether out of the ambit of  
  
ction 375 and not  
  
to call it rape even ina technical sen The  
  
punishment for the offence also may be provided in  
  
‘a separate section.”  
  
  
Page 141:  
9.04.  
  
separated  
  
observed:  
  
9.05.  
  
The Commission considered the position of legally  
  
wife vis-a-vis the offence of rape. It wae  
  
“Under the exception, @ husband cannot be guiity of  
  
raping his wife if she 1s above fifteen y  
  
re of  
age. This exception te to take note of one apectal  
situation, namely when the husband and wife ere  
living apart under a decree of judicial separation  
  
or by mutual agreement. In such a case, the  
  
marriage technically subsists and if the tusband  
has sexual intercourse with her against her will or  
without her consent, he cannot be charged with the  
offence of rape. This does not appear to be right.  
We consider that, in such circumstances, sexual  
intercourse by a man with his wife without her  
  
consent will be punishable ac rape.“+  
  
Explanation II as recommended by the Commission te  
  
18 fol lows:  
  
9.06.  
  
“A woman living separately from her husband under =  
  
decree of judicial separation or by mutual consent,  
  
shall be deemed not to be his wife for the purpose  
of this Section.  
  
‘The Forty-Second Report had recommended amendment  
  
in Section 375 on the following lines:  
  
  
  
Page 142:  
138  
  
“Section 375 - Rape - A man is  
  
id to commit rape  
who has sexual intercourse with a woman other than  
his wife —  
  
(a) against her will ; or  
  
(b) without her consent  
  
or  
(c) with her consent when it has been obtained by  
putting her in fear of death or of hurt, either to  
  
herself or to anyone else pr  
  
nt at the place; or  
(d) with her consent, knowing that it is given in  
  
the belief that he ie the husband.  
  
Explanation I. ~ Penetration is sufficient to  
constitute the sexual intercourse necessary to the  
offence of rape.  
  
Explanation If. = A woman living separately from  
her husband under a decree of judicial separation  
  
sed not to be  
  
or by mutual agreement shal be i  
  
his wife for the purpose of this section.  
  
9.07. The existing Section 375 stipulated a maximum  
sentence of life or imprisonment of either description for 10  
  
years for raj  
  
The Commission suggested that it should be  
  
rigorous imprisonment for a term upto 14 years.  
  
9.08. The Commission recommended the incorporation of  
Sections 376A and 3768. Section 376A distinguished sexual  
intercourse between a wife of 12 to 16 years of age and a  
fe of less than 12 years of age, sexual intercourse with  
  
  
Page 143:  
the wife over 15 years of  
  
without her consent not being  
  
an offence. The Commission reccumended rigorous imprigonment  
  
upto 7 years if the wife was under 12 years and in any other  
  
case, imprisonment upto 2 years of either description.  
  
9.08. Section 3768 made i1licit intercourse with a girl  
  
under 16 years but not under 12 years of age even with her  
  
consent punishable with imprisonment of either description  
  
upto 7 yei  
  
9.10. The Commisaion added that it shall be @ defence to  
  
charge under this section for the accu  
  
4 to prove that he,  
  
in good faith, believed the girl to be above sixteen years of  
age.\*  
9.11, The Forty-Second Report's signal’ contribution to  
  
the reform of rape laws wae the introduction of the concept  
of custodial rape. The Commission recommended the addition  
of sections 376C,376D and 376E dealing with custodial rape by  
@ public servant or by a superintendent etc. of a women’s or  
children’s institution, and by a manager of a hospital with a  
  
woman patient suffering from mental disorder respectively.\*  
  
9.12. The provisions on rape law remained unamended, as  
‘the Indian Penal Code Amendment 8111 could not be passed due  
  
to the di  
  
olution of the Lok Sabha in 1979.  
  
  
  
Page 144:  
9.13. In the interregnum the Supreme court of India  
decided some cases which took a restricted view of the scope  
of the offence of rape and acquitted the accused. The  
relevant decisions are Pratap Miera v. State of Oriesa’ and  
Iuka Ram v. State of Maharashtra.\* The latter case popularly  
known as the Mathura Rape case involved the rape of a young  
  
Girl aged between 14-16 y«  
  
"@ of age by two police constable  
  
in the police station. The Bombay High Court reversed the  
  
order of acquittal of the accused by the Session court and  
sentenced them to rigorous imprisonent of varying terms. The  
High Court came to the conclusion that the policemen had  
“taken advantage of the fact that Mathura was involved in a  
  
complaint filed by her brother, and she was alone in the dead  
  
hour of the night ~ in a police station. This proved that  
she could not in any probability, have consented to  
  
intercourse. The Supreme Court after assessing the evidence  
  
on record concluded that the circumstantial evidence was such  
that it did not lead to “reasonable evidence of guilt” and  
reversed the Bombay High Court decision and acquitted the  
accused. This led to four law teachers writing an open  
Letter to the Chief Justice of India criticising the  
Judgment. The Open Letter generated nationwide protests from  
women’s organisations and different sections of the Indian  
society.\* Their collective demand was for reform of the Taw  
  
on rape. The Union Government responded to the public  
  
campaign and referred the matter of reforming rape lane to  
  
the Law Commission.  
  
  
  
Page 145:  
abate  
  
I o.ta. The Law Commission sent ite e4th Report on “Rape  
and Allied Offences; Some Questions of substantive Law,  
Procedure and Evidence” to the Government in 1980.  
  
9.18. The Commission gave particular attention to the  
definition of consent and to rape of girls below the minimum  
age. It also took into account some of the recommendations  
incorporated in the Forty Second Report. The Commission had  
dispensed with the suggestions in the earlier Report which  
  
had characterized rape as -  
  
1. rape proper;  
2. rape with child-wife and  
3. Rape i.e, sexual intercourse with the gir?  
  
between 12-16 years of age, with her consent.  
  
ons given by the Commission for discarding the above  
  
«the Commission now feels that such  
restructuring would be out of tune with the current  
thinking on the question of trial of offenders for  
rape and, therefore, structure of Section 375  
should not be altered. Since the making of the  
recommendation by the Commission in its earlier  
Report, there has been a radical and revolutionary  
change in the approach to the offence of rape; ite  
  
enormity is frequently brought into prominence and  
  
  
  
Page 146:  
a1 142  
  
heightened by the revolting and gruesome  
  
circumstance  
  
in which the crime is committed; the  
case law has blurred the  
  
sential ingredients of  
the offence and introduced instability into the  
previousty well  
  
tablished aw bearing on the  
offence of rape. The Commiesion feele that  
restructuring will produce uncertainty and  
  
distortion in  
  
ction 378, which should in ite  
  
opinion, retain ite present logical and coherent  
  
etructurs  
  
Consequently, the Commission recommended the omission of  
  
Section 375A and Section 3758. Ine  
  
J, the Commies ion  
recommended leaving rape of child-wife (8.3754) in the  
general Section 375 instead of placing it in a separate  
section. Section 3758 which dealt with rape on a girl  
between 12-16 years of age with her consent was omitted  
altogether. Further, the Commission retained Sections  
376C,3760 and 376E which dealt with custodial rape; but  
renumbered them as Sections 376A,376B and 376C.  
  
9.16. (On the question of consent, the Commission observed  
that they would not only inctude the suggestions made in the  
earlier Report but suggested further amendments which would  
  
strengthen the concept of “free consent” for the purposes of  
  
Section 375. The Commission felt that the term “consent” was  
‘inadequate and should be substituted by the phrase “free and  
  
Voluntary consent”. The Commission observed:''  
  
  
  
Page 147:  
143  
  
jon “free and  
  
“The substitution of the expres  
voluntary consent” for the word “consent” in the  
second clause makes {it clear that the consent  
should be active consent as distinguished from that  
  
consent which is said to be implied by sitenc  
  
‘The Commission proceeded to say:  
“Under the amendment as recommended, it would not  
be open to the Court to draw an inference of  
consent on the part of the woman from her silence  
  
due to timidity or meekness or from such  
  
circumstances without any more, that the girl  
meokly followed the offender when he pulled her,  
  
catching hold of her hand, or that the woman kept  
  
silent and did not shout or protest or cry out for  
  
hetp.  
  
The Commission further stated:'?  
  
“The modifications recommended by us in the third  
clause vitiated consent not only when a woman is  
put in fear of death or hurt, but also when she is  
put in fear of any “injury” being caused to any  
person (including herself) in body, mind,  
eputation or property and also when her consent ie  
obtained by criminal intimidation, that is to say  
  
by any words or acts intended or calculated to put  
  
  
Page 148:  
Sarre  
  
her in fear of any injury or danger to herself or  
to any person in whom she is interested or when she  
is threatened with any injury to her reputation or  
property or to @ reputation of any one in whom she  
is interested. Thus, ff the consent is obtained  
  
after giving the woman a thr  
  
tof spreading false  
and scandalous rumours about her character or  
destruction of her property or injury to her  
children or parents or by holding out other threats  
of injury to her person, reputation or property,  
that consent will also not be consent under the  
  
third clause as recommended to be amended.”  
  
9.17, The Commission made significant recommendations on  
‘age of consent. The age of consent as applicable to the  
offence under Section 375 has been anended several times  
since the framing of IPC. The 64th Report has graphically  
  
nted in the form of a chart which ie given below:!?  
  
CHART  
‘Age of Age men— Minimum  
consent tioned in age of  
under the Exception marriage  
  
Year §.375, to $.375, under  
Sth | T.P.G. the Child  
clause,  
  
T.P.c.  
7560 10 yrs. 10 yrs. —  
1891 12 yrs 12 yes.  
  
(Act 10 of 1891)  
(after the amendment  
of IPC)  
  
é  
  
  
Page 149:  
145,  
  
1925 14 yrs. 13 yre, =  
rafter the amendment  
  
fof IPC)  
  
14 yrs. 13 yrs, 14 yrs.  
  
(after the passing of  
the Child Marriage Act)  
  
1940 16 yrs. 18 yri  
(after the amendment,  
  
of the Penal Code  
  
and the Child Marriage  
  
Act)  
  
18 yrs.  
  
1978 + 16 yrs 15 yrs. 18 yrs,  
  
9.18 As may be seen from the chart, the minimum age of  
  
marriage for girls has been ineré  
  
ed to 18 years after the  
amendment of the Child Marriage Restraint Act, 1929 in 1978.  
The Commission recommended that “since marriage with a girl  
  
below eighteen years is prohibited sexual intercourse  
  
with a girl below eighteen years should also be prohibited.”  
  
9.19. The 84th Report did not recommend any changes in  
section 378 which provides punishment for the offence of  
rape. The Commission was of the view that judicial  
  
discretion be not fettered by prescribing a minimum sentence  
  
3.20. The 84th report by introducing a broader concept of  
“misconception of fact” has eliminated any examination of  
morality or the sexual antecedents of the victim of rape.  
Section 375, fourthly (b) allows this under a broader  
misconception of fact which includes the narrower mistake of  
  
identity.  
  
  
Page 150:  
148  
  
at. Consequent on the recommendations of the Law -  
  
Commission in its 84th Report, the Government introduced in  
the Lok Sabha the Criminal Law (Amendment) Bi11, 1980 to  
amend, inter alia, the Indian Penal code. The Government.  
accepted the following recommendations of the Law Commission:  
is Accepting the concept of consent as free  
  
and voluntary consent;  
  
making a distinction between judicially  
  
separated wife and wife; and  
3. accepting the three concepts of  
custodial rape as recommended in the  
  
Commission’s 42nd Report.  
  
9.22. The 8111 made a significant addition by introducing  
  
the separate offence of gang rape by two or more persons.  
  
9.23. The 8111 was sent to the Joint Committee of the  
  
Parliament. The changes made by the Committee were  
  
1 It reduced the age of marital rape. The  
exception to Section 375 stated that  
sexual intercourse by a-man with his own  
wife, the wife not being under 15 years  
of age, is not rape. The Committee  
  
reduced this age to 12 years.  
  
  
Page 151:  
=: 147  
  
2. A new section, section 376A was.  
incorporated, which deals with sexu  
  
intercourse with judicially separated  
wife without her consent. The Committee  
  
Provided a lower punishment for rape of  
  
a judicially separated wife  
  
3. The Committee did not accept the  
  
expanded concept of free and voluntary  
  
consent in Section 375.  
  
9.24, In the Draft 8111 reported by the Joint Committee,  
  
one change was made in its final ri  
  
ding stage. The  
  
above which sexual intercourse with the wife ie not rape was  
  
ained at 15.  
  
9.25. The Parliament enacted the Criminal Law (Amendment)  
Act,1983. The chief features of which, so far as the offence  
  
of rape in IPC was concerned, wer  
  
in Increase in the punishment of rape;  
2. distinction between gang rape. and  
  
custodial rape and stiffer penalties for  
  
the same;  
  
3 separate category of rape on pregnant  
woman;  
  
4 distinguishing rape on a judictally  
  
separated wife and provision for a lower  
  
  
Page 152:  
punishment for it than tn other  
instances of rape;  
5. reduction in the punishment of rape on  
  
wife between 12 and 15 y:  
  
re of age;  
6. distinguishing rape on woman of unsound  
  
mind or one who is intoxicated.  
  
& 4.26. Accordingly sections 378 and 376 were amended and  
new sections 376A,376B and 376C were inserted. All. the  
important recommendations of the Law Commission have been  
incorporated.  
  
The provisions read as follows:  
  
“375.Rape.- A man is si  
  
id to commit “rape” who,  
  
except in the case hereinafter excepted, has sexual  
  
intercour:  
  
with a woman under circumstance  
falling under any of the six following  
descriptions:~  
  
Firet.- Against her wil7,  
  
Secondly.-Without her consent.  
  
Thirdly .-With her consent, when her consent ha:  
  
been obtained by putting her or any person in whom  
she is interested in fear of death or of hurt.  
Fourthly.-With her consent, when the man knows that  
  
he is not her husband, and that her consent is  
  
  
  
Page 153:  
that he ie another man  
  
to whom she {6 or believes herself to be lawfully  
  
Fifthly.-With her con:  
  
nt, when at the time of  
giving such consent, by reason of unsoundness of  
mind or intoxication or the administration by him  
Personally or through another of any stupefying or  
unwholesome substance she is unable to understand  
the nature and consequences of that to which she  
  
gives consent.  
  
Sixthly.-With or without her consent, when she is  
  
under sixteen yé  
  
rs of age.  
  
Explanation.-Penetration is sufficient to  
  
constitute the sexual intercourse necessary to the  
  
offence of rape.  
  
Exception.-Sexual intercourse by a man with his own  
wife, the wife not being under fifteen years of  
  
age, 16 not rape.”  
  
“378. Punishment for rape. (1) Whoever, except in  
‘the cases provided for by sub-section (2), commits  
rape shall be punished with imprisonment of either  
description for a term which shall not be less then  
  
seven years but which may be for life or for a term  
  
  
Page 154:  
which may extend to ten years and shall also be  
Viable to fine unless the woman raped is hie own  
  
wife and is not under twelve y  
  
rs of age, in which  
  
case, he shall be punished with imprisonment of  
either description for a term which may extend to  
  
two years or with fine or with both;  
  
Provided that the court may, for adequate and  
  
special ri  
  
jones to be mentioned in the judgment,  
impo:  
1  
  
@ sentence of imprisonment for a term of  
  
‘than  
  
@ Whoever ,~  
(a) being @ police officer commits rape  
(4) within the limite of the police  
station to which he 1s appointed ; or  
  
(44) in the premises of any station  
  
house whether or not situated in the  
  
police station to which he is appointed;  
or  
  
(iti) on a woman in his custody or in  
the custody of a police officer  
  
subordinate to him; or  
  
(>) being a public servant, takes  
advantage of hie official position and  
  
commits rape on a woman in his custody  
  
  
  
Page 155:  
as such public  
  
vant or in the custody  
of a public servant subordinate to him:  
  
or  
  
(e) being on the management or on the  
staff of a jail, remand home or other  
place of custody established by or under  
any law for the time being in force or  
of a women’s or children’s institution  
takes advantage of his official position  
and commits rape on any inmate of such  
Jail, remand home, place or institution;  
or  
  
(d) being on the management or on the  
staff of a hospital, takes advantage of  
his official position and commits rape  
  
‘on a woman in the hospital; or  
  
) commits rape on a woman knowing her  
to be pregnant; or  
(f) commits rape on a woman when she is  
  
under twelve y  
  
's of age; or  
  
(9) commits gang rape,  
  
  
Page 156:  
162  
  
shall be punished with rigorous imprisonment for a  
‘term which shall not be less than ten years but  
which may be for life and shall also be liable to  
  
fines  
  
Provided that the court may, for adequate and  
  
special reasons to be mentioned in the judgment,  
  
impo:  
de  
  
a sentence of imprisonment of either  
  
eription for a term of 1)  
  
than ten years.  
  
Explanation I.-Wh  
  
‘a woman ie raped by one or  
more in @ group of persona acting in furtherance of  
their common intention, each of the persons shall  
be deemed to have committed gang rape within the  
  
meaning of this sub-section.  
  
Explanation 2  
  
‘Women'@ or children’s institution”  
means an institution, whether called an orphanage  
  
or a home for neglected women or children or a  
  
widows’ home or by any other name, which 16  
established and maintained for the reception and  
care of women or children.  
  
Explanation 3.~  
  
jospit  
  
moans the precincts of  
the hospital and includes the precincts of any  
institution for the reception and treatment of  
  
persons during conve  
  
scence or of persons  
  
requiring medical attention or rehabilitation.  
  
  
Page 157:  
163  
  
“376A. Intercourse by a man with hie wife during  
  
separation.- Whoever has sexual intercourse with  
  
hie own wife, who is living separately from him  
under a decree of separation or under any custom or  
usage without her consent shall be punished with  
imprigonment of either description for term which  
may extend to two years and shall also be Hable to  
  
fin  
  
3768. Intercourse by public servant with woman in  
his custody.- Whoever, being a public servant,  
takes advantage of his official position and  
induces or seduces, any woman, who is in his  
  
custody as such public  
  
vant or in the custody of  
2 public servant subordinate to him, to have sexual  
intercourse with him, such sexual intercourse not  
amounting to the offence of rape, shall be punished  
with imprisonment of either description for a term  
which may extend to five years and shall aleo be  
  
Mable to fing  
  
376. Intercourse by Superintendent of jatl,  
  
remand home, etc.- Whoever, being the  
superintendent or manager of a jail, remand home or  
  
other place of custody  
  
tablished by or under any  
  
law for the time being in force or of a women  
  
or  
  
children’s institution takes advantage of hie  
  
  
Page 158:  
a1 188 re  
  
official position and induces or seduces any female  
inmate of such jail, remand home, place or  
  
institution to have sexual intercourse with him,  
  
euch sexual intercours  
  
not amounting to the  
offence of rape, shall be punished with  
imprisonment of either description for a term which  
may extend to five yoars and shall also be Table  
to fine  
  
Explanation 1.-"superintendent” in relation to @  
  
Jatt, remand home or other place of custody or  
women’s or children’s institution includes @ person  
holding any other office in euch jail, remand home,  
place or institution by virtue of which he can  
  
exercise any authority or control over its inmates.  
  
Explanation 2.-The expression “women’s or  
children’s institution” shall have the same meaning  
as in Explanation 2 to sub-section(2) of section  
376.  
  
“3760. Intercourse by any menber of the management  
or staff of a hospital with any women in that  
hospital. Whoever, being on the management of @  
hospital or being on. the staff of a hospital takes  
advantage of his position and has sexual  
intercourse with any woman in that hospital, such  
  
sexual intercourse not amounting to the offence of  
  
  
Page 159:  
rape, shall be punished with imprisonment of either  
description for a term which may extend to five  
  
cy  
  
rs and shall alo be Table to fine.  
  
Explanation,  
  
The expression ‘hospital’ shall have  
  
‘the same meaning  
  
in. Explanation 3 to sub-section  
  
(2) of section 376.~  
  
9.27. Now we shall examine the recommendations of the  
National Commission for Women(NCW) and other suggestions made  
in response to the Questionnaire. Following are the  
  
recommendations of the National Commission for Women:  
  
1. Section 375 be amended to change the reference  
  
to 16 years in paragraph, sixthly, to 18 years to  
provide for the increase in the age of majority of  
  
girls to 18 years.  
  
2. Also @ consequential amendment to change the  
reference to 15 years to 18 years. has aleo been  
  
made in the Exception which deals with  
  
xual  
intercourse by aman with his own wife not being  
  
under 15 years of age”.  
  
a, Section 376 providing for punishment of rape be  
  
amended thus:  
  
  
  
Page 160:  
<1 186 :~  
  
(a) The reference of sentence of punishment to 2  
years for rape by the husband with his own wife who  
  
is more than 12 y¢  
  
ra of age is proposed to be  
increased to § years(Section 378 sub-clause(1)).  
  
(b) The punishment provided in sub-section (2) is  
  
Proposed to be ineri  
  
J from a minimum punishment  
of 10 years to punishment of rigorous imprisonment:  
for life. At the eame time, the punishment for  
rape when a woman who is less than 12 years.of age  
{9 proposed to be taken out of this section and  
dealt with in a separate Section providing for  
higher punishment. This is sought to be done by  
incorporating a new section, namely sub-section (3)  
  
to section 376 which would read as :  
  
Whoever commits rape on a woman when she je under  
  
twelve y  
  
rs of age shall be punished with rigorous  
‘imprisonment for a term which shall not be less  
  
than ten years and shall also be liable to fine.  
It 1s also recommended that three new sectione,  
section 376E, Section 376F and Section 376G be incorporated  
  
in the Indian Penal Code.  
  
Section 376  
  
: Offence under Section 376A to  
  
Section 376D against childrer  
  
  
  
Page 161:  
Whoever commits an offence under Section 376A to  
  
Section 376D (both tnclusive) shall, if the woman  
  
1s under eighteen yeare of age, be punished with  
imprisonment of either description for a term which  
  
may extend to ten years and shall also be liable to  
  
Fin  
  
Section 376F: Offence of eve-teasing.- Whoever  
intending to annoy any woman utters any word or  
  
mak  
  
any sound or gesture or exhibits any object  
or does any other act in any public place intending  
that such word or sound shall be heard or that such  
gesture or object shall be seen or that such act  
  
shall be noticed or felt by such woman, conmite the  
  
offence of eve-teasing.  
  
Section 376G: Punishment for eve-teasing.- Whoever  
  
commits the offence of ¢ ing shall be  
  
punished with imprisonment of either description  
for a term which may extend to § years and shall  
also be liable to fin  
  
9.28. According to the latest report of the National  
  
Crime Records Bureau entitled Crime in India, 98,948 c  
  
1s of  
crime against women were registered in 1994 compared to  
  
83,954 cases in 1993 and 79,037 cas  
  
in 1992, This amounts  
  
to an incre  
  
of 17.9 per cent in crime against women at the  
  
national level in 1994 with considerable increase in case  
  
  
  
Page 162:  
168 :  
  
registered under rape, kidnapping and abduction. The Report  
points out that Delhi, Rajasthan, Tamil Nadu, Madhya Pradesh,  
Himachal Pradesh, Karnataka and Pondicherry have been  
categorised as “high crime prone” stat  
  
In 1994 Madhya.  
Pradash reported the highest incidence of rape (2,929)  
accounting for 22.2 per cent of the national ratio. This was  
followed by Uttar Pradesh(2,078), Maharashtra (1,304), Bihar  
(1,130), Rajasthan (1,002). Other States which recorded more  
  
than 500 c:  
  
6 of rape during the year were. Andhra Pradesh,  
West Bengal and Assam. Delhi reported 309 incidents  
  
contributing 2.3 per cent towards national average.  
  
Among the cities, Delhi and Mumbai continued to  
  
record more ci  
  
18 of rape. At the national level, victime of  
rape were the highest in the age group of 16-30 years  
accounting for 56.3 per cent of the total victims, But in  
the metropolitan cities, the situation was altogether  
different as 50 per cent of the total victims were girls  
  
below 16 years of age.'#  
  
The Delhi State Commission for Women in its Report  
Situation of Girls and Women in Dalhi (1997) has pointed that  
  
‘the “rate of rape” in delhi is twice  
  
high as in the whole  
  
country. Ouring 1993 as many a 233 rape  
  
8 wore reported  
  
which rose to 321 in 1994, to 362 in 1995 and to 470 in 19%  
  
An analysis of 1998 crime data showed that in 88 per cent of  
  
the rape cases relatives and acquaintances were involved and  
  
in 89 per cent of the cases the crime was committed at home.  
  
  
  
Page 163:  
ne Report also points out that 60 per cent of the reported  
cases in Delhi are of girls below 18 years. Further in 1993  
as many ae 18 por cent of rape victime were below 10 years of  
age as against § per cent in the.whole country. About 42 per  
cent of the rape victims were in the 10 to 16 age groups  
  
compared to 23 per cent in the country.1?  
  
9.29. The UN Commission on the Status of Women in its  
Draft Declaration of Violence Against Women declares that  
“violence nullifies women’s enjoyment of human rights of  
freedom”. The Convention for the Elimination of All Forme of  
Discrimination Against Women (CEDAW 1979), ratified by India  
  
recently, also does not speak of gender-based violence. It  
  
is generally agreed that violence against women is an  
infringement of their fundamental rights to life, liberty and  
  
dignity  
  
9.30. The  
  
ie a echool of thought that the existing  
  
definition of rape in IPC is narrow and does not cov  
  
different forms of sexual violence experienced by women.?\*  
The present definition requires proof of penetration by penis  
land lack of consent by the complainant. © Consent plays  
  
crucial part in a rape trial .  
  
  
Page 164:  
1. Further, section 354 (assault or criminal force on  
  
woman with intent to outrage her modesty) and section 509  
jrord, gesture or act intended to insult the modesty of @  
oman) as interpreted by the courts do not cover virulent  
  
forms of sexual assault on women.  
  
9.32. The proponents of this view advocate that the  
sections of IPC dealing with rape (sections 375 and 376) and  
sections 354 and $09 be repealed and be substituted by  
provisions on “Sexual Assault” - to be defined broadly to  
  
include a1 forms of sexual violence on women including rape.  
  
9.33. After giving considerable thought to the point of  
View referred to above, the Law Commission is of the opinion  
that the offence of rape including custodial rape and ite  
punishment be retained in IPC subject to the modifications  
  
stated below in para 9.94.  
  
9.34. The Law Commission recommends that clause ‘Thirdly’  
  
in section 375 be amended on the following lines:  
  
Section 375: A man is said to commit rape -  
  
Firstly ~..  
  
Secondly - .--  
  
Thirdly - With her consent, when her consent has  
been obtained by putting her or any person in whom  
  
she is interested, in fear of death or of hurt, or  
  
of any ether injury.  
  
  
  
Page 165:  
.  
  
‘the words “or of any other injury” expand the scope of this  
  
clause to provide for situations of rape by persone in  
position of trust, authority, guardianship or of economic or  
social dominance. These cases will include incestuous rape  
‘and other instances where a victim of rape is totally  
  
dependent on the offender who is in a dominant position.  
  
The National Commission for women has recommended  
that section 375 be amended to change the reference of age to  
16 years in clause ‘Sixthly’ (rape with or without her  
  
consent) to 18 years, The Law Commission approves that the  
  
charge proposed by NCW is necessary particularly in view of  
  
raising the age in  
  
ction 261 (Kidnapping from lawful  
  
guardianship - age changed from 16 to 18 years).  
The Law Commission, however, does not endorse the  
change proposed by NCW in the Exception to Section 375  
  
(sexual intercourse by a man with hie wife) incres age  
  
from 1§ years to 18 years. Consequently, there need be  
‘any amendment to section 198(6) Cr.P.C. as suggested by the  
  
National Commission for Women.  
  
The Law Commission ie of the opinion that the  
offence of child rape and its punishment 1s provided for  
  
under the existing Section 376(2)(f). Consequently, the  
  
  
Page 166:  
2 162 =  
  
incorporation of a new sub-section (3) to Section 376, as  
recommended by the National Commission for Women, is not  
  
called for.  
  
9.38. To deal with the issue of increasing sexual  
violence on women and female children, the Law Commi eston  
recommends that the offence of sexual assault be added to the  
existing offence of outraging the modesty of women in Section  
  
364 and punishment be increased from two yé  
  
rs to five years  
  
Accordingly, Section 354 be amended on the following lines:  
  
Section 354. Assault or criminal force to woman  
  
with intent to outrage her modesty  
  
Whoever  
  
aults or  
  
criminal force to any woman,  
intending to outrage her modesty or to commit  
sexual assault to her or knowing {t to be 1ikely  
that he will thereby outrage her modesty or commit  
sexual assault to her, shall be puntehed with  
  
imprisonment of either description for a term which  
  
may extend to five years and shall also be liable  
  
to fine.  
  
Expanding the scope of Section 364 in the above manner, would  
  
in our view, cover the varied forms of sexual violence other  
than rape on women and female children.  
  
  
  
Page 167:  
=: 163  
  
The Law Commission te further of the view that the  
offence of eve teasing falls within the scope of Section 509  
and there is no need for a new section 376F as recommended by  
the National Commission for Women. However, the Law  
Conmission feels that the quantum of punishment be increased  
from 1 year to 3 years and fine. Accordingly, we recommend  
  
that Section 509 be amended in the following manner:  
  
Section 508. Word, gesture or act intended to  
insult the modesty of a woman.- Whoever, intending  
to insult the modesty of any woman, utters any  
word, makes any sound or gesture, or exhibits any  
object, intending, that such word or sound shall be  
heard, or that such gesture or object shal! be  
seen, by such woman, or intrudes upon the privacy  
of such woman, shall be punished with imprisonment  
of either description for a term which may extend  
  
to three ye  
  
and shal also be liable to fine.  
  
1L.\_BIGAMY  
  
9.36. Section 494 defines bigamy as the act of a person  
who, having a husband or wife living, marries but only in a  
case where such subsequent marriage ie void under hie or her  
  
personal Taw.  
  
  
Page 168:  
o 164  
  
9.37. Til the enactment of the Hindu Marriage Act, 1985,  
the impact of this section fell only on Christians and  
Parsis. @ut after the coming into force of that Act, Hindus  
150 have come within the purview of this provision. Must ins  
and some tribes, who are permitted by their family Taw and  
  
customs to practice polygamy, are excluded.  
  
9.38. The Law Commission in its 42nd Report had revised  
  
the section as follows:  
  
"494. Bigamy.- Whoever, being married, contracts  
  
another marriage in any case in which such marriage  
is void by reason of its taking place during the  
subsistence of the earlier marriage, commits  
  
bigamy.  
  
Explanation.- Where a marriage has been dissolved  
by the decree of a competent court under an  
enactment but the parties are, by virtue of a  
provision of the enactment under which their  
marriage is dissolved prohibited from re-marrying  
  
within a specified pertod, thon, for the purposes  
  
of this section, the = marriage shall,  
  
notwithstanding its dissolution, be deemed to  
  
subsist during that period.  
  
  
Page 169:  
Exception. - The offence is not committed by any  
person who contracts the later marriage during the  
life of the spouse by earlier marriage, if, at the  
  
‘time of the later marriage, such spouse shall have  
  
been continually absent from such person for seven  
years and shall not, within that period, have heard  
of by such person as being alive, provided the  
person contracting the later marriage inform the  
person with whom it is contracted of the real state  
of facts so far as the sane are within his or her  
  
knowledge.”  
  
The Commission felt that the punishment for bigamy  
  
was “unnece:  
  
ily high" and ao be reduced from seven years  
  
to three years.'7  
  
9.39. The Commission also recommended the reduction of  
punishment for the aggravated form of bigamy, under eection  
495 namely where bigamy is accompanied by the concealment of  
the fact of former marriage from the person with whom the  
subsequent marriage is contracted, from ten years to seven  
  
years.1®  
  
9.40. But the IPC Bi11 (Clause 198) has not accepted the  
  
commendation of reduction of punishment for bigamy under  
  
section 494.  
  
  
Page 170:  
= 186 2  
  
9.41. The B11] significantly has added Explanation 1  
which stipulates that a person shall be deemed to marry again  
whatever legal defect there may be in contracting,  
  
celebrating or performing such marriage.  
  
For prosecution for bigamy to succeed, prosecution  
  
must show first of all that at the time of  
  
cond marriage,  
there was a valid subsisting marriage. Where proof of either  
marriage is unsatisfactory, there would be no conviction,  
Explanation I to Section 494 in the B411 has introduced a  
deeming fiction. It deeme the second marriage valid despite  
legal defects in contracting, celebrating or performing such  
marriage, By this, the accused cannot take the defence of  
non performance of ceremonies in the second marriage to save  
  
himself from the clutches of the offence of bigamy.  
  
The incorporation of this deeming provision in  
Explanation was in consequence of the judicial decisions on  
the scope of section 17 of the Hindu Marriage Act,1986. The  
Supreme Court in Bhaurac v. State of Maharashtra’? held that  
  
the offence of bigamy was not proved unt:  
  
sit was  
  
established that the second marriage was celebrated with  
  
Proper ceremonies and due form. This conclusion was reached  
  
on the ground that $.17 of the Hindu Marriage Act, had used  
the word “solemized”. Accordingly the court held that it  
  
intial for the purpose of section 17, that the  
marriage to which section 494 applies on account of the  
  
Provisions of the Act, should have been celebrated with  
  
  
Page 171:  
= 167:  
  
proper ceremonies and due form, As the law requires no  
  
specific ceremonies but recogni:  
  
ceremonies of marriage  
according to custom, it becomes extremely difficult to  
  
determine which ceremony or ceremoni:  
  
were really essential.  
Bhaurgo decision was reiterated in two subsequent decisions  
‘of the Supreme Court in Keval Ram v. H.P. Administratian \*¢  
and Priva Gala v. Suresh Chandra.?! Consequently a great  
burden is cast on the prosecution to show that the second  
marriage is performed with all due formalities. Thie burden  
  
in many cas  
  
cannot be diecharged satisfactorily to prove  
  
the offence of bigamy. Therefore, it was felt neces  
  
ry to  
add the Explanation. The Committee on the Status of Women in  
its Report “Towards Equality” (1975) had recommended the  
incorporation of Explanation to Section 17 of the Hindu  
Marriage Act that an omission to perform some essential  
ceremonies by parties shall not be construed to mean that the  
offence of bigemy was not committed. This recommendation has  
also found a place in Explanation (1) to Section 494 in the  
  
Bill.  
  
Explanation 2 has been added to section 494 by which it ts  
made clear that where the relevant divorce law prohibits  
re-marriage of the parties within a specified period after  
  
the decr  
  
of dissolution, such ri  
  
marriage amounts to  
  
bigamy. Explanation 2 1s as follow:  
  
  
  
Page 172:  
“Where a marriage has been dissolved by a decree of  
‘a competent court but the parties are, by virtue of  
a provision of the enactment under which their  
  
marriage is dissolved, prohibited from ri  
  
arrying  
within a specified period, then for the purposes of  
this section, the marriage shall, notwithstanding  
its dissolution, be deemed to subsist during that  
  
period.”  
  
The Supreme Court in Sarla Mudsal's?? case held  
that conversion from @ monogamous religion (Hinduism) to a  
polygamous religion (Islam) for the purpose of second  
marriage, during the subsistence of first marriage, would  
make the second marriage violative of justice, equity and  
good conscience etc. The Court also held that the apostate  
husband would be guilty of the offence of bigamy. The Court  
has thus removed the uncertainty ae regards the effect of  
  
conversion on marriage  
  
9.42, We recommend that another Explanation, Explanation  
2 be added to section 494 incorporating the principle laid  
down by the Supraaeme Court in the Sarla Mudaal’s case on the  
following lines to put the matter beyond doubt:  
  
“Explanation 3: The offence of bigamy is committed  
  
when any person converts himself or herself to  
another religion for the purpose of marrying again  
  
during the subsistence af the earlier marriage.  
  
  
Page 173:  
‘1LL.\_\_ADULTERY  
  
9.43. In the First Report on the Draft Indian Penal Code,  
adultery was not made an offence. However, the First Law  
Commission in its Second Report on the Oraft Indian Penal  
code, after giving due consideration to the subject, came to  
  
‘the conclusion that it was not advi  
  
le to exclude thie  
  
offence from the Code.?3  
  
9.44, The offence of adultery under section 497 fe very  
Vimited in scope in comparison to the misconduct of adultery  
  
in divorce (civil) proceedings  
  
The offence 1s committed  
only by aman who has sexual intercourse with the wife of  
another man without the latter’s consent or connivance. The  
wife is not punishable for being an aduiteress or even ae an  
abetter. Punishment is imprisonment of either description  
  
for a term up to five years or with fine or with both.  
  
9.45. ‘The Law Commission in its 42nd Report recommended  
the retention of section 497 in {ts present form with the  
  
modification that, even the wif  
  
+ who has sexual relations  
  
with a person other than her husband, should be made  
punishable for adultery. The Commission also recommended  
  
that five years’ imprisonment is “unreal and not called for  
  
  
Page 174:  
1170 =  
  
nl any circumstances and should be reduced to two yeare”.24  
‘he Commission recommended that the section may be revised ai  
‘ollows:-  
  
If a man hi  
  
“497. Adultery  
  
sexual intercourse  
with @ woman who 46, and whom he knows or ha  
ef  
  
on to believe to be the wife of another man,  
without the consent or connivance of that man, such  
sexual intercourse not amounting to the offence of  
rape, the man and the woman are guilty of the  
offence of adultery, and shall be punished with  
imprisonment of either description for a term which  
may extend to two years, or with fine, or with  
  
both. "#5  
  
9.48. The constitutionality of section 497 was challenged  
under article 32 as violative of the right to equality in  
article 14 in Sowmithri Vishnu v. Union of India?\*. The  
  
basis of challenge was that the section mak«  
  
‘an irrational  
  
er  
  
sification between men and women and it unjustifiably  
denies to women the right given to men. This section confers  
upon the husband the right to prosecute the adulterer but  
does not confer any right upon the wife of the adulterer to  
do so. The Supreme Court negatived the contention and upheld  
‘the constitutionality of section 497.  
  
Clause 199 of the Indian Penal Code Amendment A111,  
  
js as Section 497:  
  
  
Page 175:  
11  
  
“Whoever hae sexual intercourse with @ person who  
4, and whom he or she knows, or has reason to  
  
believe, to be the wife or husband as the case may  
  
be, of another person, without the consent or  
connivance of that other person, such sexual  
intercourse by the man’ not amounting to the offence  
‘of rape, commits adultery, and shall be punished  
with imprisonment of either description for a term  
which may extend to five years, or with fine, or  
  
with both.”  
  
The IPC (Amendment) Bi11 has brought in the concept  
of equality between sexes in marriage vis-a-vis the offence  
of adultery in the substituted section 497. However, the Law  
  
Commission recommends that the phraseology of clause 199 has  
  
to be modified on the following lines to reflect the concept  
  
of equality between sexes. Accordingly clause 199 shall read  
  
as:  
  
“section 497.- Whoever has sexual intercourse with  
  
‘a person who is, and whom he or she knows, or hae  
  
reason to believe, to be the wife or husband, as  
  
the case may be, of another person, without the  
consent or connivance of that other person, such  
  
sexual intercours  
  
not amounting to the offence of  
  
rape, commits adultery, ‘and shal! be punished with  
  
  
  
Page 176:  
<2 TR  
  
imprisonment of either description for a term which  
may extend to five years, or with fine or with  
both.”  
  
‘The Supreme Court in Sowmithri Vishnu case had  
observed that “it is for the Legislature to consider whether  
section 497 should be amended appropriately so as to take  
note of the ‘transformation’ which the society has  
undergone”. The proposed change reflects the transformation  
  
of women’  
  
status in the Indian society. The punishment of  
  
five years remains the same.  
  
9.47. If section 497 is amended on the lines indicated  
above, sub-section (2) of section 198 of the Code of Criminal  
  
Procedure, 1973 needs to be suitably amended.  
  
TV. UNNATURAL OFFENCES.  
  
9.48, Section 377 a  
  
‘1s with unnatural offences ike  
sodomy, buggery and bestiality. Thie section was amended in  
1985 making the punishment more stringent to one of  
imprisonment for life or with imprisonment of either  
  
description for a term up to ten years and fine. Section 377  
  
reads as:  
  
  
  
Page 177:  
173 =  
  
“Whoever voluntarily hae carnal intercourse againat.  
the order of nature with any man, woman or animal,  
  
shall be punished with imorisonment for life, or  
  
with imprisonment of either description for a term  
  
which may extend to ten years".  
  
49. The Law Commission in its 42nd Report had  
  
recommended that cases of bestiality should be regarded  
  
pathological manifestations to be ignored by the criminal  
1  
  
9.50. The Commission, however, felt that “Indian Society,  
by and large, disapproves of homo-sexuality and this  
disapproval is strong enough to justify it being treated as a  
criminal offence even where adults indulge in it in private”,  
and observed that “Buggery” may continue as an offence  
punishable less severely than at present but, where it is  
committed by an aduit on a minor boy or girl, the punishment  
  
be higher. So the Commission had ‘recommended that section  
  
377 be revised as follow  
  
“377. Buggery- Whoever votuntartly has carnal  
intercourse against the order of nature with any  
man or woman shall be punished with imprisonment of  
either description for a term which may extend to  
  
two years, or with fine or with both;  
  
  
  
Page 178:  
nb ATA re  
  
and where such offence is committed by a person  
  
over eighteen years of age with a person under that  
  
the imprisonment may extend to seven years.  
Explanation: Penetration is sufficient to  
constitute the carnal intercourse necessary to the  
  
offence described in thie section.”  
  
The Indian Penal Code (Amendment) Bill (clause 160)  
  
adopted the above recommendation of the Law Commission.  
  
vst We recommend that in view of the growing incidence  
  
of child sexua} abu  
  
in the country, where unnatural offence  
  
© committed on a person under the age of eighteen  
  
ere should be a minimum mandatory sentence of imprisonment  
  
of either description for a term not 1)  
  
thich may extend to seven years. The court shall, however,  
yave discretion to reduce the sentence for adequate and  
special reasons to be recorded in the judgment. Consequently  
  
section 377 be amended on the following lines:~  
  
"8.377. Unnatural offences.- Whoever voluntarily  
  
carnal intercourse against the order of nature  
with any man or woman shall be punished with  
imprisonment of either description for a term which  
  
may extend to two years, or with fine, or with  
  
bot!  
  
and where such offence is committed by a  
  
  
  
Page 179:  
<2 ATS  
  
person over eighteen years of age with a person  
under that age, he shall be punished with  
imprisonment of etther description for a term which  
  
shall not be less than two y  
  
‘8 but may extend to  
  
seven years and fine.  
  
Provided that the court may for adequate and  
special reasons to be recorded in the judgment,  
impose a sentence of imprisonment of either  
  
description for a term of less than two y  
  
rs.  
  
Explanation - Penetration ie sufficient to  
constitute the carnal intercourse necessary to the  
  
offence described in this section.”  
  
Y. CHILD SEXUAL ABUSE  
  
9.52. Child sexual abuse (CSA) is considered one of the  
‘new’ epidemics of the last decade. CSA could be any kind of  
“physical or mental violation of the child with sexual intent  
  
usually by an elder person who 1s in possession of trust or  
  
Power viz-a-viz the child’  
  
.?7 The experience may vary from an  
  
adult exposure of genitals to t  
  
child or to persuade the  
child to do the same, the adult touching the child’s genital  
  
or making the child to touch hie own, involving the child in  
  
  
Page 180:  
Frornegraphy - both printed and visual, having oral, vaginal  
jor anal intercourse with the child, making verbal or other  
fending or fingering, touching er voyeurism or any such  
  
Jattempt could also be CSA.2¢  
  
9.53. According to the statistics reported in Crime in  
India, of the total victims of rape cases, children accounted  
for more than 25 per cent. There is an increasing trend  
  
since 1990 as regards child rape.  
  
White 3,393 cases of child rape were reported in  
1393, it increased to 3,986 in 1994. Giving the state-wise  
incidence of child rape, the Report says Madhya Pradesh led  
in reporting the highest number of 803 child rape cases,  
followed by Uttar Pradesh (538), Rajasthan (205) and DeThy  
(206) in 1994, Among the cities, Delhi and Mumbai resorted  
more victims of child rape in the age group below 10 years  
  
and also in the age group of 10-16 years.?#  
  
While conducting the study of CSA in Deihi, the  
Dothi Police found that information regarding the offences of  
molestation or outraging of modesty ($.364 IPC) and unnatural  
sex offences (S.377 IPC) committed on children below 16 years  
was not readily available. Information was collected for  
1994 wherein a total number of 291 cases was recorded out of  
  
which 69 girls were below 16 years.(31%). In respect of  
  
  
Page 181:  
-2477  
  
unnatural offences, out of 24 cases, there were 22 boys and 2  
  
dirle indicating that 96.9% of the victims, were children  
  
Selow 16 yoara.3°  
  
It ie difficult to get hard data on the extent of  
38A in the country. But there ie a silver Vining in the  
yorizon. Some NGOs have undertaken studies on CSA and  
areliminary findings are none too happy. Samvada, 8  
  
Bangalore bi  
  
1d NGO found, in a study of 348 college girls,  
that 47 per cent of students had been subjected to sexual  
  
abu  
  
About 45 per cent had experienced such abuse before  
the age of 14. The most common offender was a known male  
family member. Similar are the findings of Sakshi, a Dethi  
based NGO in a study made of 357 girls of government and  
private schools. It was found that 63 per cent of the  
children had suffered some form of sexual abuse, about 22 per  
cent suffered serious sexual abuse and in 29 per cent of the  
cases, the abuse was by a person whom they trusted fully. In  
their analysis of 19 cases of CSA in 1996 it was found that  
  
in majority of the the victims were children between  
  
‘one and twelve years.  
  
9.54, The Constitution of India provides special  
Protection to children. Article 15(2) confers powers on the  
State to make special provisions for women and children.  
Article 39(f) provides that children are given opportunities  
and facilities to develop in a healthy manner and in  
  
Conditions of freedom and dignity and that childhood and  
  
  
Page 182:  
-: 178:  
  
youth are protected against explo{tation ‘and againet moral  
and material abandonment. This provision was added to the  
Constitution by the Constitution (Forty-fourth Amendment.  
Act), 1978, Article 45 mandates the state to provide for  
free and compulsory education for all children until they  
complete the age of 14 years.  
  
9.55. Since 1945 the welfare and rights of children have  
been a matter of great concern for the United Nations. one  
of the first acts of the General Assembly was to establish  
the United Nations children Fund (UNICEF). In 1989, the  
  
Declaration on The Right of the Child wae drafted which hae  
  
been serving as a guide post to private and public action in  
the interest of children on the basie “that mankind owes to  
the child the best it has to give". This Declaration  
ultimately led to the drafting of the Convention on The  
Rights of The Child which was adopted unanimously by the  
General Assembly on 20th November, 1989. 187 States have  
ratified this Convention. The Convention came into force in  
India on 11th January, 1993, Some of the provisions of the  
Convention specifically deal with the protection of children  
  
from sexual offences and violation, in particular Articles  
  
34,35 and 36. Article 34 of the Convention imposes an  
obligation on the State parties to protect the child from all  
  
forms of sexual exploitation and sexual abu  
  
For these  
Purposes the States are mandated to take appropriate measures  
to prevent (i) the inducement or coercion of children to  
  
engage in any unlawful sexual activity: (ii) the exploitative  
  
  
Page 183:  
<2 179 so  
  
use of children in prostitution or other unlawful sexual  
  
and (411) the exploitative use of chitdren in  
‘Pornographic performances and materials. Article 35 requires  
‘states to take all measures to prevent the abduction of the  
sale of or traffic in children for any purpose or in any  
form. Article 20 mandates states to protect the children  
against alt other forms of exploitation prejuaicia’ to any  
  
aspects of the child's welfare.  
  
9.56. So far as rape of children under 12 years is  
concerned, the existing section 376(2)(f) provides a minimum  
mandatory sentence of 10 years rigorous imprisonment which  
may extend to life and fine.  
  
9.57. To counter the evil of all other forms of sexual  
  
abuse of female children, the Law Commission's  
recommendations for amendment of section 364 as stated in  
Para 9.35, in Part-IV should be adequate. In addition, the  
Law Commission’s recommendation in para 9.52 of Part-IV for  
Aggravated punishment for the commission of unnatural  
offences under section 377 1P¢, on both male and female  
ersons under eighteen years of age by adults would cover  
  
child sexual abuse on children, both male and female.  
  
9.58. In the opinion of the Law Commission, the existing  
Section 376(2)(f), and the Law Commission's recommendations  
For amendment of sections 364 and 377 are adequate to deal  
  
with child sexual abus:  
  
Consequently, the Law Commission  
  
  
  
Page 184:  
180 =  
  
does not recommend the incorporation of new section 364A as  
suggested in clause 146 of the Indian Penal Code (Amendment)  
Bill.  
  
9.59 Sexual-child abuse may be committed in various  
forms euch as sexual {ntercourse, carnal intercourse and  
exual assaults. The cases involving penile pdmetration into  
vagina are covered under section 375 of the IPC. If there is  
‘any case of penile oral penetration and penile penetration  
into anus, section 377 IPC dealing with unnatural offencwe,  
4  
  
; carnal intercourse against the order of nature with any  
  
man, woman or animal, adequately takes care of th  
  
If acts  
such as penetration of finger or any inanimate object into  
  
vagina or anus are committed against a woman or a female  
  
child, the provisions of the proposed section 954 IPC  
  
whereunder a more severe punishment is also prescribed can be  
  
invoked and as regards the male child, the penal provisions  
  
‘of the IPC concerning ‘hurt’, ‘criminal force’ or ‘assault’  
as the case may be, would be attracted. A distinction has te  
be naturally maintained between sexual assault/use of  
criminal force falling under section 364, sexual offence:  
falling  
It may not be  
  
falling under section 375 and unnatural offenc  
  
under section 377 of the Indian Penal Cod  
  
appropriate to bring unnatural offences punishable under  
  
section 377 IPC or mere sexual assault or mere sexual use of  
  
criminal force which may attract section 354 IPC within the  
ambit of ‘rape’ which is a distinct and graver offence with «  
  
definite connotation. It is needt;  
  
to mention that any  
  
  
  
Page 185:  
nr 184 re  
  
attempt to commit any of these offences is also punishable by  
virtue of section 511 IPC. Therefore, any other or more  
  
changes regarding this law may not be necessary.  
  
  
Page 186:  
10.  
  
We  
12.  
  
= 102 =  
  
Law Commi:  
  
ion, Eighty Fourth Resort, para 1  
page 1 (1980).  
  
See Susan Grownmiiier, Against Our Wil) Men.Women  
and Rape (1990); Lotika Sarkar, “Rape A Human  
  
Rights versus a Patriarchal Interpretation,” 1  
Indian Journal of Gender Studies 69 (1994); Flavia  
  
Agnes, “Protecting Women against Violence?” 27  
  
Economic and Politica! Weekly (EPW) 19 (1992); also  
by the same author, State, Gander and the Rhetoric  
of Law Reform (1995) Lorenne Clark and Debra Lewis,  
Rape = The Price of coercive Sexuality (1977).  
  
Law Commission, Forty Second Report, para 16.115,  
page 277.  
  
Ibid.  
  
Id., para 16.117, pages 277-278.  
  
Id., para 16.120, page 278.  
  
AIR 1977 sc 1307.  
  
AIR 1979 Sc 105.  
  
See Vasudha Ohaganwar, Law, Power and Justice  
237-287 (2nd ed. 1992).  
  
Law Commission, Eighty Fourth. Report, supra note 1,  
para 2.21, page 9  
  
Id., para 2.8, page 6.  
  
‘Id., para 2.9, page 6.  
  
  
  
Page 187:  
13,  
  
14.  
  
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22.  
23.  
  
24.  
  
28.  
  
Id., para 2.19, page  
  
See, “Upeurge in Crime against Women: Report”,  
Hindy (Dethi ed.) 9.12.1996.  
See \* Delhi's Shame: Women Most uneafe,~  
  
incorporating an analysis of the Report of the  
Delhi State Commission for Women, Hindustan Times  
(Dethi ed.) 6.21997.  
  
See provisions of the Sexual Assault Draft 8111,  
1993 prepared by the Ad hoc Committees of the  
National Commiseton for Women; alao see the  
Memorandum on Reform of Laws relating to Sexual  
offences prepared by Shomona Khanna and Ratna  
  
Kapur, Centre for Feminist Li  
  
ren, New  
Dethi.  
  
Report, para 20.10, page 323.  
Ibid, para 20.10.  
  
AIR 1965 Sc 1964.  
  
AIR 1966 SC 1564.  
  
AIR 1971 SC 1183.  
  
SaclaMudaal v Union of India, AIR 1996 SC 1631.  
Second Report on the Draft Indian Penal Code 134-35  
  
(1947), Law Commission.  
  
Forty Second Report on the Indian Penal Code, para  
20.18, page 227 (1971).  
  
Ibid.  
  
  
Page 188:  
26.  
  
27.  
  
26.  
  
30.  
  
AIR 1985 SC 1618; 1986 (Supp) Sco 137.  
  
Child Sexual Abuse literature by ‘Sakshi’ New  
  
Delhi  
  
Schwartz, Horovitz and Cardarelli Child Sexual  
Abuse 58-59 (Sage Publications 1990)  
  
Amod Kanth, “CSA” Legal and Investigative,  
Perspective", in Sheela Garse (Ed) Child  
  
Victims 'Rights: Report of International Conference  
  
Abu im Protective Inv  
and Trial Procedure 11 at 19(1986).  
  
See Pioneer (Deni ed.) dated 7.11.1996, page  
  
See also “Incestuous Father Poisons Pregnant  
Daughter to Death,” Indian Express - Express  
Newsline (Delhi ed.) 3.12. 1996.  
  
  
Page 189:  
rat  
  
‘CHAPTER-X  
  
ABDUCTION INCIDENTAL TO HIJACKING  
  
The Indian Penal Code hae been- spoken of as @ model |  
piece of legislation as the premier Code of Criminal law, and  
as the monument of the great genius of Lord Macaulay under  
  
whose supervision it was constructed. The Code 4  
  
ja with  
  
territorial as well as extraterritorial crimes.  
  
ction 4 extends the Code to extraterritorial  
offences. Accordingly, the provisions of the Code apply also  
to any offence committed by any person on any ship or  
  
aircraft ré  
  
istered in India wherever it may be.  
  
To deal with the problem of “Piracy” which wi  
  
very  
common in the last Century, two special legislations were  
  
enacted name!  
  
(4) Admiralty Offences Act, 1894; and  
(41) The Merchant Shipping Act, 1894.  
  
But the framers of the Code never thought about the  
crime of “Air-Piracy” which is commonly known aa  
  
“Air-Hijacking” now a days, So the Code confines to the  
  
  
Page 190:  
186 :~  
  
crimes of the abduction of person only but not the abduction  
  
of the aircraft or vehicles. Hence a need has been felt to  
  
include the crime of “Air-Hijacking" in the Cod  
  
NT TH  
10.02, Section 362 of the Indian Penal code is dealing  
  
with the abduction which runs as under:  
“362. Abduction:~ whoever by force compels, or by  
deceitful means induces, any person to go from any  
  
place, is said to abduct that person.”  
  
The ingredients ne  
  
sary to constitute an  
  
bduction of a person ari  
  
1, that the person must have been made to go  
from any place, and  
  
2. that such going must have been ~  
  
(a) under compuision by the use of  
force, or  
  
(b) induced by deceitful means -  
  
(4 )abduction by itsetf is not  
punishable as a substantive offence  
  
(2) gut if it falls within the  
categories dealt with by sections 384 to  
  
369 except 266A, 3668 and 268 by ri  
  
  
  
Page 191:  
187 :-  
  
of other additional elements apart from  
force or fraud, it will be an offence  
  
punishable under those section  
  
Of course, Section 362 is dealing with the problem  
of “Abduction” of a “person”, But in the crime of  
Air-hijacking, the “Aircraft” is a juristic “person”.  
Moreover, at the time of committing the crime of  
Air-Hijacking, there may be persons inside the sircraft  
  
either as passengers or as crew members or both.  
  
But legally, it will be very difficult to cover the  
crime of Air-Hijacking under Section 362 of the IPC as°this  
  
crime w  
  
never tmaginated by the framers of the Code. And  
  
as society progressed, the notions of property and revenge  
  
‘Grew up which germinates new crimes in the society and one of  
  
them is the modern crime of Air-Hijacking.  
  
Proposal to Include “Air-htiackina” in the IPC  
  
10.03. In the recent past, the new crime of air hijacking  
he  
  
increased. Despite the steps taken by the countries as  
well as International civi} Aviation Organisation (ICAO)  
  
there is no reduction in the incidence of hijacking.  
  
  
  
Page 192:  
= 188 3  
  
The Law Commission of India in tte letter dated  
tione to tackle the  
  
26th December 1996 sought the augg:  
  
fproblem of hijacking of aircrafte or other vehicl  
  
Itea 13  
Sof the letter says that-  
  
“ the cases of hijacking of aircraft and vehicles  
in recent past have been galore in parts of our  
country ridden with terrorism. In view of this, it  
is felt that the hijacking of an aircraft or  
vehicle be made punishable under the Indian Penal  
Code. 00 you think that there should be a uniform  
punishment for both the offences or it should vary  
according to gravity of the offence and be  
deterrent punishment in case of hijacking of an  
  
aircraft on board or in flight?  
  
Similarly in ite questionnaire on IPC, 1860 (Item  
18 p. 36), the Law Commission has asked the opinion to  
  
include this crime in the IPC, namely-  
  
(4) hijacking of aircraft; and  
  
(1ihijacking of the vehicles.  
  
  
Page 193:  
2 188 :~  
  
In the questionnaire, the option has been suggested  
there should be a uniform punishment for both the  
  
or it should vary according to the gravity of the  
  
ipffence and be deterrent punishment in case of hijacking of  
an aircraft on board or in flight.  
  
EARLIER REPORT (42nd) OF THE LAN COMMISSION  
  
10.04. The Law Commission of India has submitted its 42nd  
Report in June 1971. In the said report (Item 16.96 p.296),  
‘the problem of abduction incidently to hijacking wae  
  
discussed. The Commi  
  
jon had received the suggestion that,  
to cover the crime of hijacking of aircraft or other vehicle,  
  
‘an amendment may be made so  
  
to punish those who indirectly  
cause persons to be transported to a place which ie not their  
intended destination. In other words, extradition was  
  
Sought. The need for such amendment w  
  
‘emphasised on the  
ground that the compulsion in such cases, at least ao far aa  
the passengers are concerned, is indirect. However, the Law  
  
Commission expressed its view that such cases could be  
  
regarded as falling within the Section 362, notwithstanding  
the indirect nature of the compulsion and therefore, no  
  
‘amendment is necessary.  
  
Nonetheless, IPC (Amendment) B111, 1978  
  
{Attempt to include the crime of “Air-hijacking in a new  
Jeection s62a.  
  
E  
  
3  
  
  
Page 194:  
190 :  
  
Insertion of section 362A in the IPC:  
  
10.08. By clause 149 of the IPC (Amendemnt) 8111, 1978, it  
  
ls proposed to add a new section 362A. The proposed section  
thich explains the meaning of Air-hijacking and hijacking of  
  
the Vehicles and also prescribed the punishment for the said  
  
arime reads as follows:  
  
"362A. (1) Whoever on board an aircraft in flight,  
  
being an aircraft registered in Indi  
  
or any other  
aircraft in flight over Indian air space,  
unlawfully by force or show or threat of force or  
by any other form of intimidation seizes such  
aircraft or exercises control over it or attempts  
  
to seize or exercise control over it for the  
  
purpose of landing ft at a place other than the  
  
place of its destination or for any other purposs  
  
ie said to commit the offence of hijacking of  
aircraft and whoever commits such hijacking shal!  
  
be punished with imprisonment for life, and shall  
  
algo be liable to fine.  
  
(2) Whoever on board a vehicle in India or a  
vehicle registered in India unlawfully by force or  
show or threat of force or by any other form of  
  
intimidation seizes such vehicle or exercises  
  
control over it or attempts to seize or exercise  
  
  
  
Page 195:  
aE 191 re  
  
control over it for the purpose of taking it to @  
place other than the place of its destination or  
for any other purpose, is said to commit the  
offence of hijacking of vehicle and whoever commits  
such hijacking shall be punished with rigorous  
imprisonment for a term which may extend to ten  
  
years and shal! also be liable to fin  
  
Explanation- In this section-  
  
(4) the period during which an aircraft,  
is in flight chall be deemed to include  
any period from the moment when power is  
applied for the purpose of the aircraft  
taking off on a flight until the moment  
when the landing run, if any, at the  
  
termination of that flight ends:  
  
(ii) the word “vehicle” include any  
  
but does not include an  
  
aircraft.”  
10.06. Apart from the above, the following are  
1160 contained in the 8111:  
  
{. Io substitute of section 103 Ipc, (Clause 35(d) of the  
  
a4)  
Clause 35 of the 8i11 substituting section 103  
  
relevant sub-clause 35(4)  
  
  
  
Page 196:  
“Sub-Clause 35(d) mischief to property used or  
  
intended to be used for the purposes of the  
  
Government or a local authority or a Corporation  
‘owned or controlled by the Government, where euch  
mischief is committed by intentional destruction  
of, or substantial damage to, property, or”  
  
(e) hijacking of aircraft, or  
  
(f) sabotage.”  
  
However, this clause does not deal with the  
  
vischief intended to be committed with the private aircraft.  
  
T. Io substitute of section 105 IPC (clause 37 of the 8111)  
  
“Clause 37 of the 8111 for substituting  
  
vf the IPC runs as unde!  
  
108. \*  
  
he right of private defence of property  
commences when a reasonable apprehension of danger  
  
to the property commences; and it continues-  
  
(a).  
  
  
Page 197:  
193  
  
(dee  
  
(ce) against mischief, criminal trer hijacking  
  
of aircraft, or sabotage,  
  
Jong as the offender  
  
continues in the commission of the offence.  
  
ur. ‘To substitute sections 426 to 492 and 434 to 440 of  
  
‘he IPC: (clauses 179 and 180 of the Bi11) -  
  
In Clause 179, it is proposed to substitute  
Sections 426 to 432 of the IPC. Similarly, it ie proposed in  
Clause 180 to substitute Sections 434 to 440. The most  
important proposed section in the Bill relating to the  
  
Mischief of Aircraft runs as under:~  
  
"432. Whoever commits mischief by doing any act  
whereby he destroys or moves or renders lees useful  
any air-route, beacon or aerodrome light, or any  
light at or in the neighborhood of an air-route or  
aerodrome provided in compliance with Taw, or any  
other thing exhibited or used for the guidance of  
aircraft, euch act not amounting to the offence of  
Sabotage, shall be punished with imprisonment of  
either description for a term which may extend to  
  
seven years, or with fine, or with both,”  
  
  
  
Page 198:  
194  
  
10.07. The IPC (Amendment) 8111, 1978, though passed by  
the Rajya Sabha, but could not become an Act due to  
dissolution of the then Lok Sabha. In the meantime, the  
problem of “Air Hijacking” was increased and it was felt  
urgently to have an effective piece of legislation to deal  
with the burning problem. Therefore, two principal Acte came  
into force in 1982 and after amendments the Acts are known as  
unde!  
  
(4) The Anti-Hijacking Act, 1982  
  
(45) The Anti-Hijacking (Amendment) Act, 1994;  
  
(144) The Suppression of Unlawful acts against  
  
Safety of Civil Aviation Act, 1982;  
  
(iv) The Suppression of Unlawful acts against  
Safety of Civil Aviation (Amendment) Act, 1994.  
  
The Anti-Hijacking Act, 1982  
  
10.08. This Act was enacted to give effect to the  
Convention for the Suppression of Unlawful Sefzure of  
Aircraft and for matters connected therewith. The said Act  
  
(No 68/1982) came into existence on 15th November 1982.  
  
  
Page 199:  
Section 3 of the Act explains the crime of  
hijacking” as under-  
  
“2.(1) Whoever on board an aircraft in flight,  
unlawfully, by force or threat of force or by any  
  
‘other form of intimidation, seizes or exercises  
  
control of that aircraft, commits the offence of  
  
hijacking of such aircraft.  
  
(2) Whoever attempts to commit any of the acts  
  
referred to in sub  
  
tion (1) in relation to any  
aircraft, or abets the commission of any such act,  
shall also be deemed to have committed the offence  
  
of hijacking of such aircraft.  
  
(3) For the purposes of this section, an aircraft  
shall be deemed to be in flight at any time from  
the moment when all its external doors are closed  
following embarkation until the moment whon any  
such door is opened for disembarkation, and in the  
case of a forced landing, the flight shall be  
deemed to continue until the competent authorities  
of the country in which such forced landing takes  
place take over the responsibility for the aircraft  
  
and for persons and property on board.”  
  
  
Page 200:  
196 :-  
  
Section 4 has prescribed the punishment for the  
rime of hijacking. It says that whoever commits the offence  
Bf hijacking shall be punished with imprisonment  
  
r life and shail also be liable to fine.  
  
Section 7 explains the provisions as to  
tradition. Accordingly, the offences under the Act shalt  
gr deemed to have been included as extraditable offences and  
provided for in all the extradition treaties made by India  
‘with Convention countries and which extend to, and are  
  
binding on, India on the date of commencement of thie Act.  
  
10.09. This Act was amended in 1994 (No, 39/94). Through  
the amendment any police officer by notification was made  
competent to arrest, investigate and prosecute the criminal  
of hijacking. The Amendment Act also prescribed the  
establishment of special Designated Court and the Designated  
Court shall presume, unless the contrary 1@ proved, that the  
  
‘accused had committed such offence.  
  
‘Ihe Suppression of Unlawful Acts Aaginst Safety of  
Givil Aviation Act. 1982  
  
jto.10, The said Act was enacted to give effect to the  
Wention for the Suppression of Unlawful acts Against the  
fety of Civil Aviation and for matters connected therewith.  
  
his Act came into force on 15th November 1982.  
  
  
Page 201:  
197  
  
Section 3 of the Act defines the offence committing  
fviolence on board an aircraft in flight, etc. Section 3 runs  
fas under -  
  
"3.(1) Whoever unlawfully and intentional ly-  
(a) commite an act of violence against a person on  
board an aircraft in flight which is likely to  
  
endanger the safety of euch aircraft; or  
  
(b) destroys an aircraft in service or causes  
damage to such aircraft in such a manner as to  
render it incapable of flight or which is likely to  
endanger its safety in flight; or  
  
(c) places or causes to be placed on an aircraft in  
service, by any means whatsoever, a device or  
substance which is likely to destroy that aircraft,  
‘or to cause damage to it which renders it incapable  
of flight, or to cause damage to it which ie likely  
to endanger its safety in fligh'  
  
or  
  
(4) communicates such information which he knows to  
  
be false so as to endanger the safety of an  
  
aircraft in flight,  
  
shall be punished with imprisonment for life and  
  
shall also be liable to fine.  
  
  
Page 202:  
198  
  
(2) Whoever attempts to commit, or abets the  
commission of, any offence under sub-section (1)  
shall aleo be deemed to have committed such offence  
and shall be punishable with the punishment  
  
provided for such offence.”  
  
11, This Act was amended by an Amendment Act (No. 14/84)  
lend Section 3A was added which explains the mischief too. It  
  
rune as under.  
  
After Section 3 of the Principle Act, the following  
  
leections shall be inserted, namely:-  
  
“3A.(1) whoever, at any airport, unlawfully and  
intentionally, using any device, substance or  
  
weapon-  
  
(a) commits an act of violence which is likely to  
  
cause grievous hurt or death of any person; or  
(b) destroy or seriously damages any aircraft or  
facility at an airport or disrupts any service at  
  
the airport,  
  
‘endangering or thr  
  
tening to endangerteafety at  
that airport, shall be punished with imprisonment  
  
for life and shal! also be liable to fine.  
  
  
Page 203:  
3(2) whoever attempts to commit, or abets the  
commission of, any offence under sub-section (1)  
shall also be deemed to have committed such offence  
  
and shall be punished for such offenc  
  
The Section 9A was atso in  
  
ted in the Principle  
  
Act and accordingly the Designated Court shall presume,  
unless the contrary is proved that the accused had committed  
  
such offence mentioned in the act.  
  
Thus, it {8 crystal clear that this Special Act is  
dealing about the mischief to aircraft and its operation in  
an effective manner, and certainly in a better manner than  
Proposed section 432 in the IPC (Amendment) 8111 of 1978  
(Clause -179).  
  
Thus these two special legislations are sufficient  
for dealing with the offences relating Hijacking, Safety, and  
  
mischief of Civil Aviation in an effective manner.  
  
Snecial Leaislation vis-a-vis Indian Penal Code  
  
10.12, For the framers of the Code, it was tmpossible to  
  
Make the Code exhaustive of all offences. Section § of the  
  
Code is important and has wisely left all pre-existing,  
  
Special, or local laws. The Code deals only with general  
  
  
  
Page 204:  
pffences, and it cannot cover the, offences which are covered  
py local or special laws. The saving of special or local lew  
ns, in accordance with the general principle generalis  
poscialibus non derosant which means that general words do  
Bot derogate from special. In other words, general words do  
hot repeal or modify special legislation. (Seward ve. Yera,  
ho ac 68)  
  
10.13. The effect of thie section is to qualify the  
general repeal contained in section 2 of the code seeking to  
repeal al} other Jaws for punishment of offence. Thus the  
  
code was intended to be a general one, it was not found  
  
desirable to make it exhaustive and hence offences defined by  
local or special laws were left out of the code, and merely  
  
declared to be punishable as thereto fore  
  
Therefore, it 1 provided in Section 26 of the  
  
General Clauses Act, 1897 that~  
  
“Where an act or omlasion constitutes an offence  
under two or more enactments, then the offender  
shall be liable to be prosecuted and punishable  
  
under any of those enactments  
  
but shail not be  
Viable to be punished twice for same offence.”  
(Also double jeopardy Article 20 (2) of the  
  
Constitution).  
  
  
Page 205:  
201  
  
4 But this, of course, assumed, that there is nothing  
  
fn the one to exclude the-operation of the other. In other  
eribee ite own  
  
where @ special or Yocal Act pr  
  
words,  
there is  
  
penalties they are presumed to be exhaustive, unl:  
  
anything in the Act to save general law. Moreover, it is  
  
wel) settled law that where an Act is punishable both under  
the code as well as under a special or local law, the  
preferable course is to convict under the special law and not  
  
fel mera) r .  
  
under the code, both becat  
the special Acts are primarily constituted  
  
as well as becat  
  
to punish such del inquenct:  
  
Moreover, it is proposed in clause 3 of the IPC  
  
(Amendment) 8111, 1978 to substitute section § of the IPC as  
  
under  
  
“Nothing in this code shall affect the provisions  
  
of any special or local law.”  
  
Problem of hijacking of aircraft or vehicles sum  
  
up.  
  
10.14. The existing general provisions in the 1e¢ cover  
moving of any property unlawfully amounting to theft and when  
a force is used it may become robbery and if committed by  
five persons or more it amounts to dacoity. But in view of  
new trends of crime Tike hijacking of aircraft or vehicles,  
  
in 1978 Bill certain provisions are sought to be included and  
  
  
Page 206:  
=: 202 :-  
  
Inijacking of aircraft or vehicles are being made specific  
offences by Virtue of section 3628 under clause 149.  
Incidentally, some changes are suggested in the provisions  
Felating to private defence and are sought to be made in  
  
editions 103, 105 by adding hijacking of aircraft or  
  
botage. The other existing provisions relating to mischief  
  
also cover some of the alleged offences committed in respect  
  
of the aircraft or vehicles. In view of the change  
  
to be  
brought about relating the offence of hijacking in the 8411,  
they have explained under the proposed section 437 the  
meaning of sabotage which is sought to be introduced or  
  
inserted under clause 180. Likewi  
  
some changes are  
  
ction 432  
  
suggested in the Bi11 in the proposed new  
  
regarding mischief committed in respect of the air servic:  
  
Tike beacon, lights, etc. at the airport. The Pc  
(Amendment) 8111 was prepared in 1978, thereafter the  
Anti-hijacking Act of 1982, subsequently amended in 1994,  
Also the Suppression of Unlawful acts against Safety of Civil  
Aviation Act, 1982 was enacted which was also amended in  
1994. An examination of the provisions of these Acts it is  
crystal clear that the changes what are sought to be brought  
about in this regard under clause 179 are being taken care of  
  
in th  
  
special enactments both in respect of hijacking as  
  
well as the mischief to the service as such.  
  
Therefore, there is no necessity now to have  
Section 362A as proposed in the IPC (Amendment) Bi11, 1978 in  
  
respect of hijacking of aircraft. Consequently, the changes  
  
  
Page 207:  
=: 208  
  
Broposed under clauses 35 and 37 of the IPC (Amendment) 8111,  
i978 for the amendments in sections 103 and 105 of the IPC  
Which deal with the mischief to property including hijacking  
Bf aircraft, would not be necessary. Needless to mention  
Enat the mischief to the air service etc. has been made a  
Erine and punishable under the special enactments mentioned  
mbove. Hence, no amendment is also required in section 422  
  
lof the IPC as proposed in the IPC (Amendment) Bill, 1978.  
  
10.15, In the light of above discussion, it is recommended  
that section 362A is not required to be inserted in the IPC.  
  
milarly th  
  
38 no need to amend sections 103, 105, 432 of  
‘the IPC for covering the crime of air hijacking and mischief  
  
to air service etc.  
  
10.16. But this crime is tremendously — ner  
  
ing  
throughout the world. The legislation of a country fails  
when the jurisdiction for the crime of air hijacking or  
criminal arises in two or more countries. It ie the need of  
  
the hour that to prevent this crime internationa cooperation  
  
ie required. Therefore, it is very necessary to have a look  
“for international trends towards the problem specially here  
he crime is a continuing crime and have jurisdiction of two  
International trends and convention pertaining air hijacking  
‘shall be useful not only for our recommendations but also for  
  
sademic value.  
  
  
Page 208:  
=1 204 +  
  
‘the Crime of Air-hifackina:~  
  
th10.17. Afreraft hijacking is @ contemporary addition to  
p.the roster of international and national crimes and the  
  
necessity for its control at international and national level  
  
fs only beginning to be recognized by States. In its wide  
  
hijacking is an act against the safety of civil  
  
aviation and resembles piracy.  
  
‘Tokyo Conventions, 1963,  
  
10.18. According to Article 1, when a person on board has  
unlawfully committed, by force or threat thereof, an act of  
  
of contro? of an  
  
interference, seizure or wrongful exerci  
aircraft in flight or when such an act is about to the  
committed, contracting States shall take all appropriate  
meacures to restore contro} of the aircraft to ite lawful  
  
commander or to preserve its control of the aircraft.  
  
Further, the contracting State, when the aircraft lands,  
  
shall permit its passengers and crew to continue their  
  
Journey as soon as practicable and shall return the aircraft  
and its cargo to the persons lawfully entitled to the  
  
that any contracting  
  
possession, Article 13 further provid  
State shall take the delivery of any person whom the aircraft  
commander delivers and that it shall immediately make a  
  
Preliminary enquiry into the facts. It is clear from the  
  
  
Page 209:  
208 :~  
  
hove provisions that an attempt to define the term  
Ditgations upon a contracting State and lays more emphasis  
hose persons who are entitled to ite possession and to  
  
yermit. its passengers and crew to continue their journey  
  
won as practicable.  
  
‘he Hsque Convention of 1970  
0.19, Article 1 provides that “Any person who on board an  
  
Mrcraft in flight:  
  
(a) unlawfully, by force or threat thereof, or by  
  
izes or exerci:  
  
any other form of intimidation,  
contro} of that aircraft or attempts to perform any  
  
such act, or  
  
(b) 48 an accomplice of a person who performs or  
attempts to perform any such act, commits an  
  
offence.....  
This provision also does not define the term  
hijacking’, but simply mentions its essential elements.  
  
lonethetess, according to International Law, following are  
  
he essential elements of the offence of hijacking:  
  
  
  
Page 210:  
(4) Unlawful use of force or threat thereof or any  
  
other form of intimidation;  
  
(41) To do above-mentioned acts with a view to  
  
seize the aircraft or to exercise control over it;  
  
(iti) The said acts should have been committed on  
  
board an aircraft in flight;  
  
(iv) Accomplice of person who performs to attempts  
to perform the above-mentioned act is also guilty  
of the offence of hijacking.  
  
The above-mentioned essential elements are similar  
  
to tho:  
  
mentioned in Article 11 of the Tokyo Convention,  
1963. The only innovation in “Hague Convention, 1970" is  
that it includes an accomplice of a person who performs or  
  
attempts to perform any such act.  
  
‘The Montreal Convention, 197  
  
10.20, A conference was called by ICAO at Montreal from  
8th to 23rd September, 1971. As a recult of this conference,  
Convention (known as Montreal Convention For The  
Suppression of Unlawful Acts Against the Safety of civil  
Aviation, 1971) was adopted. Article 1 of the Montreal  
Convention provides that any person commits an offence if he  
  
unlawfully and intentionally-  
  
  
Page 211:  
(a) performs an act of violence against a person on  
board an aircraft if that act is likely to endanger  
  
the safety of that aircraft;  
  
(b) destroys an aircraft in service or causes  
damages to such an aircraft which renders it  
incapable of Flight or it is likely to endanger its  
  
safety in flight  
  
(©) places or causes to be placed on an aircraft in  
service, by any means whatsoever, a device or  
Substance which ie Tikely to destroy that aircraft,  
for to cause damage to it which renders it incapable  
of flight, or to cause damages air navigation  
facilities or interferes with that operation, if  
  
any act is likely to endanger the  
  
ety or  
  
aircraft in flight; or  
  
(4) destroys or damages air navigation facilities  
or interferes with that operation, if any such act  
is likely to endanger the safety or aircraft in  
  
flight; or  
  
(8) communicates information which he knows to be  
false, thereby endangering the safety of an  
  
aircraft in flight.  
  
  
Page 212:  
Besides thie, it te further provided that a person  
  
‘also commits an offence if he attempts to commit any of the  
Sffences mentioned above or if he is an accomplice of a  
  
}Peraon who commits or attenpts 6 commit any such offence.  
  
No doubt, Under Article 1 of this Convention, the  
concept of the offence of hijacking was further widened.  
Under this Convention, the State parties have undertaken that  
they will provide deterrent punishment to the hijackers.  
other provisions are similar to that of the Hague Convention.  
Tt would not be wrong to say that it is simply an improvement  
of the Hague Convention. As a matter of fact, it would have  
been better if the provisions of Montreal Convention had been  
  
adopted as protocol to the Hague Convention.  
  
10.21, The principle of universal jurisdiction is  
  
pect of the crime of piracy.  
  
universally recognised in ri  
  
Since hijacking is generally described as aerial piracy, the  
principle of universal jurisdiction should apply in respect  
of the crime of hijacking. ®y universal jurisdiction ia  
  
respect of a crime, it ie meant that the crime is against the  
  
interests of international community and in order to suppress  
  
such a crime, al) States can exercise jurtediction in respect  
  
of the crime. The Hague Convention, 1970, and the Montre:  
  
Convention, 1971 on hijacking have gone a long way to confer  
  
  
  
Page 213:  
=} 208 :-  
  
iversal jurisdiction to a great extent on all States, if an  
brrencer or alleged offender te within the torritery of @  
irate, both conventions contain provisions for him to be  
taken into custody, and if he is not extradited, for hie case  
  
to be placed before the prosetution authorities.  
  
Although neither Convention creates a duty to  
axtradite or an inescapable duty to prosecute authorities are  
vevertheless under a duty to take their decision in the same  
sanner asin the case of any ordinary offence of a serious  
  
vature under the law of that State. If the decision ‘8 in  
  
1@ affirmative, the above mentioned universal jurisdictional  
slause ensures that the courts will be competent to hear the  
  
2 th isty  
rim ur.  
  
0.22, The idea of the establishment of an International  
  
Fiminal Court is not a new one. It has been a much  
  
iscussed topic since the end of the first World War. It has  
Ssumed urgency in view of the fact that political aspecte  
re not sufficiently regulated in the Hague convention of  
970. On September 14, 1970,the than Secretary-General of  
ne U.N. proposed that hijacker should be brought to trial  
2fore an international tribunal. In his view, the proposed  
Aternational tribunal would defend the interests of all  
  
Poples and nations and would be effective if governments  
  
  
  
Page 214:  
pledged themselves to extradite hijackers to be brought  
before the tribunal. One of the reasons for the  
establishment of an International Criminal Court is that some  
  
times it will be difficult for a National Court to punish an  
  
International delinquent.  
  
In this connection, following three kinds of  
  
proposals have been made.  
  
(1) A separate court adminietered by the united  
  
Nations;  
  
(2) A Special Division of the International Court  
  
of Justice: or  
  
(3) A court by means of International Conventions.  
  
m to be  
  
But since many States do not sti1)  
  
prepared to take stringent measures against hijackers and in  
view of the present state of international relations and  
affairs, preventive measures comprising of thorough searches  
of all passengers, and their luggage constitute the best  
  
means to prevent or at least minimise the incidents of  
  
hijacking.  
  
Problems i f the Hi iacker:  
  
  
Page 215:  
10.23. Yet another shortcoming in the existing law {9 in  
Feopoct of axtradition of the hijackera, Extradition of  
alleged offenders is obligatory only when there ia a treaty  
to that affect. Moreover, the hijacking is not included as  
an extradition offence in some extradition treaties. Also  
extradition treaties often provide that State is under no  
obligation’ to extradite its own nationals, or persons who  
have committed crimes of political nature. Further, the  
reluctance of States to extradite hijackers who have acted  
for political motives is understangable, hijacking an  
aircraft is often the only way in which an individual can  
  
escape from a country where he is liable to political, social  
  
or religious persecution and it would be undesirable to  
require other States to sand him back to a country where he  
  
faces such persecution. 8ut unless such an individual is  
  
punished, there is danger that other people with less  
excusable motives will be tempted to imitate him. It is,  
  
therefore a matter of regret that the Hague and Montreal  
  
Conventions stopped short of requiring States prosecute  
  
hijackers, who are not extradited.  
  
As regards action against States which refuse to  
extradite or prosecute, it may be suggested that an amendment  
to the Chicago Convention which empowered the Council of  
T.C.A.0, to order the suspension of all services to or from  
member States or 1.C.A.0, which refused to extradite or  
Prosecute hijackers would override air service treaties  
  
Previously concluded between member States. If member States  
  
  
Page 216:  
between accepting such an amendment and  
  
were forced to choot  
coasing to be members of T.C.A.0. they would probably accept  
the amendment, because they would not Tike to lose the  
advantage of membership of T.C.A.0. Tt was unfortunate that  
  
ited to the I.C.A.0. At  
  
‘such an amendment when pr  
  
4973 could not be adopted as it failed to  
  
acure only 65  
  
requisite 67 votes. It could  
  
‘only two votes less than the requisite number.  
  
tradition  
  
10.24. In India, there is the Extradition Act, 1962, The  
Act felicitate the Extradition Treaty with other countries if  
the same provides extradition of the accused of the crime  
  
including Crime of Air-Hijacking.  
  
Moreover, Section 7(2) of the Anti-Hijacking Act,  
  
1962 provides that for the purposes of the application of the  
  
Extradition Act, 1962 to offences under this Act, any  
aircraft registered in a Convention country shalt, at any  
time while that aircraft te in flight, be deemed to be within  
the jurisdiction of that country, whether or not it is for  
  
the time being also within the jurisdiction of any other  
  
country.  
  
  
Page 217:  
= 218  
  
10.25. In the Tight of the above discussion, it appears  
that there is an urgent need to have an International Court  
of Civil Aviation. The proposed Court will deal with the  
crimes of Air hijacking, mischief in the air service where  
  
The  
  
tho Jurisdiction will arise in two or more counte te  
Law Commission is aware that making a direct recommendation  
jn International Law is not within its jurisdiction,  
nevertheless this recommendation is being made incidentally  
  
and in the interest to prevent the crime of international  
  
eivi) aviation. Therefore, it is expected from the  
Government of India to take up this recommendation with the  
  
international comity as and when possible  
  
HIJACKING OF THE VEH  
10.26. In the recent past the crime of vehicle hijacking  
has increased in various parts of the countries. To take  
  
away the passenger vehicle sometimes by miscreants like  
terrorists etc. has created the problems for the  
  
administration of Law and order.  
  
10.27. In this connection, it is proposed that amendment  
is required in the IPC to tackle this problem, Though the  
Chapter XVII of the IPC “ offences against the property” is  
already dealing with the offence against the property Dut not  
dealing with hijacking of vehicles as there is no motive to  
  
take the ownership of vehicle in case of hijacking of  
  
  
Page 218:  
vehicle. In the hijacking, generally motive may be to create  
torror or demand raneom or counter bargaining. But on the  
other hand, in Chapter XVIT of the IPC; sole motive te to  
take the property for the purpose of ownership ultimately,  
  
If the criminals for the hijacking of vehicles will be booked  
under this Chapter as well as Section 362 of the IPC which is  
dealing with the abduction of the person either in the  
  
vehicle or outside the vehicle, then prosecution may face  
problem in proving “mens rea”. Another problem may be to  
  
punish and identify the actual group behind the crime.  
  
The establishment of the principle that there must  
be a mantal,even though objective, in crime, is now a few  
centuries old, Tracing the evolution of this principle,  
  
ys: “The new  
  
Russel! on crime (11th Edition p.23)  
conception that merely to bring about a prohibited crime  
should not involve a man in Viability to punishment unless in  
addition he could be regarded as morally blamoworthy, cam to  
be enshrined 4n the well-known maxim “actus non facit eum  
nist mone eft rea", This ancient maxim which moana that an  
act does not make a man guilty unless there be gufity  
intention propounds @ moral test of criminal Viability weich  
has lingered in the law for no man can be convicted of «  
crime at common aw unlese both the physical and momal  
  
elements are present in the crime.  
  
  
Page 219:  
statutory offen  
  
10.28. The law relating to mens rea in statutory offence  
js substantially the samo. The basic rule of interpretation  
  
jg that “unless the statute, either  
  
of statutory offenc  
clearly or by necessary implication rules out mene rea as a  
constituent part of a crime, a defendant should not be found  
guilty of an offence against the criminal law unless he has a  
guilty mind”. This rule is “of the utmost importance for the  
protection of liberty of the subject”. With this view their  
Lordships of the Privy Counci} agreed in Srinivasa Mall\_vs  
Emperor (AIR 1947 P.C.135). This statement of the Taw by the  
Privy Council was approved by the Supreme Court in Ravula  
  
Hariorasada Rao vs. State (AIR 1951 SC 204)  
  
Though it is true that actus non facit reum nisi  
mens sit rea is a cardinal doctrine of criminal law the  
Legislature can create an offence which consists solely in  
doing an act, whatever the intention or state of mind of the  
person acting may be. Whather mene req ie @ conatituent part  
of a crime or not must in every case depend upon the wording  
of the particular enactment. The Privy Council observed In  
Srinivasa Mall's case that in a limited class of offences  
which are usually of a comparatively minor character the  
offence can be committed without a guilty-mind. This class  
is generally made up of acte mala \_prohibita and the  
  
prohibitions are intended to protect the public or to promote  
  
  
Page 220:  
216  
  
the general welfare, and , therefore, mens rea is not  
insisted upon as an essential ingredient of the offence  
  
words by the Legislature.  
  
Junless so declared in expra:  
  
However, 80 far as the Indian Penal code i  
concerned, every offence under it virtually imports the idea  
of criminal intent or mens rea, Intent denotes all those  
states of mind which the statute creating the offence in  
question regards as necessary that an accused must have in  
  
order to fix the guilt in him.  
  
Needless to mention that to constitute @ crime the  
act must, except in the case of certain statutory crimes, be  
accompanied by a criminal intent or by such negligence or  
indifference to duty or to consequences as is regarded by the  
Jaw as equivalent to criminal intent. Intention, however, is  
Not capable of positive proof: it can only be implied from  
  
jumed to  
  
overt acts. As a general rule, every ane man ie pri  
intend the necessary or the natural and probable consequences  
of his acts and this presumption of law will prevail unlese  
from a consideration of all the evidence the Court entertains  
@ reasonable doubt whether such an intention existed. This  
Presumption, however, is not conclusive, nor alone sufficient,  
to justify a conviction and should be supplemented by other  
  
testimony.  
  
  
Page 221:  
matt  
  
10.29. The gravity ja auch that it cannot be left as  
theft. Therefore, there is an urgent need to make it a  
separate offence. Therefore, to avold doubta, it to  
  
recommended to incorporate the Crime of “Hijacking of  
Vehicles” etc. in the IPC. By making this crime a  
“statutory Crime”,all the controversies (1tke whether the  
  
d crime can be covered or not in Chapter XVII), wil!  
  
disappear  
10.30. In the light of the above, it is recommended that-  
1 Section 262A (1) as mentioned in the IPC  
  
(Amendment) 8111, 1978 (Clause 149) may be omitted but clause  
  
under:  
  
(2) may be inserted in the IPC a  
  
8.3624, Whoever on board a vehicle in India or a  
venicle registered in India unlawfully by force or  
show of threat or force or by any other form of  
intimidation seizes such vehicle or exercises  
control over it or attempts to seize or exercise  
control over it for the purpose of taking it to a  
place other than the place of its destination or  
for any other purpose, is said to commit the  
offence of hijacking of vehicle and whoever commits  
such hijacking shall be punished with rigorous  
imorisonment for a term which may extend to ten  
  
years and shall also be liable to fine,  
  
  
Page 222:  
218  
  
Explanation- In thie section-  
  
(4) The word “Vehicle” include any vessel but does  
  
not include an aircraft.  
  
isd Section 432 of the IPC (Amendment) 111, 1978  
  
(Clause 179) may be dropp  
  
mn. In the above mentioned explanation the words,  
helicopter, air glider etc.” may be inserted. It may read  
  
as under:  
  
(3) The word “Vehicle” include any vessel including  
  
etc., but does not  
  
helicopter, or air-glid  
  
include an aircraft.  
  
The words “helicopter, air-glider etc.” may be  
inserted in $.2 (a) of the Anti-Air Hijacking Act  
1982, as well as in the Suppression of Unlawful,  
  
acts Against Safety of Civil Aviation Act, 1982.  
  
Iv If need be, necessary amendment may be carried out  
  
in the special lagislations, mentioned above.  
  
  
Page 223:  
m1 219:  
  
CHAPTER~ XI  
  
DOCUMENT - SCOPE OF ITS DEFINITION  
  
Section 403 defines the term “forgery”. This  
  
n provides that “whoever makes any false document or  
  
sect  
part of a document with intent to cause damage or injury, to  
the public or to any person, or to support any claim or  
title, or to cause any person to part with property, or to  
enter into any express or implied contract, or with intent to  
commit fraud or that fraud may be committed, commits  
forgery”. Section 464 defines making of a false document and  
enumerates various situations as to when a person can be said  
to make a false document. The Commission proposes to  
further examine the scope of the term ‘document’ in view of  
the latest scientific developments in the field of computers  
as well as in the context of forgery of a copy of a document  
  
also the implications of fabricating a document to conceal  
  
@ past injury or fraud to escape liability for criminal  
  
prosecution.  
  
11.02 Commission of fraud through the use of computers  
  
With the advent of electronics many transactions  
are dono through computors. Recent’ scam of Fraud in New  
Delhi Municipal Corporation electricity bills through use of  
  
computars is an illustration of computer fraud.  
  
  
Page 224:  
The topic of computer crime has recently formed the  
subject of a report by the Scottish Law Commission. In this  
respect the Scottish Law Commission identified eight distinct  
forms of behaviour, while the English counterpart referred to  
  
three critical  
  
five main headings. In both cases, howev  
  
iesues stand out, namely (i) the involvement of the computer  
in a scheme to secure unlawful financial advantage or the  
unauthorised amendment or deletion of data, (ii) the  
  
curing of  
  
unauthorised use of a computer system or the  
unauthorised access to data held therein and (iii) the  
“theft! of the information,  
  
The Audit Commission (U.K.)(1) has conducted a  
triennial survey of ‘computer fraud and abuse’. The  
Commission was only able, in their survey covering the years  
1984-87 to discover 118 incidents of frauds within England  
ang Wales with total losses amounting toa little over 2.5  
millfon pounds. It has alec been alleged that clearing bankn  
have set aside the sum of 85 million pounds to cover losses  
arising from computer fraud. The Audit Commission (U.K.)  
further found that the concept of computer frauds spane a  
Wide range of activities ranging from sophisticatea  
multimillion pound frauds to the misuse of a oank’s automatic  
teller machine  
  
Therefore, ‘there is @ need to explicitly bring the  
computer frauds within the purview of Chapter XVIII of the  
  
IPC dealing with offences relating to documents by enlarging  
  
  
Page 225:  
the scope  
11,03,  
  
follows:~  
  
m2 22tre  
  
of the term ‘document’.  
  
The term ‘document’ is defined in Section 29 IPC ae  
  
“29. Document. = The word “document” denotes any  
matter expressed or described upon any substance by  
  
means of letters, figures, or marke, or by more  
  
than one of those means, intended to be used or  
which may be used, as evidence of that matter.  
  
Explanation I. = It is immaterial by what means or  
voon what substance the letters, figures or marks  
are formed, or whether the evidence is intended,  
  
for or may be used in, Court of Justice, or not.  
  
Tilustrations  
  
A writing expressing the terms of a contract, which  
may be used as evidence of the contract, is a  
document.  
  
A cheque upon a banker ts a document  
  
A power-of~  
  
torney {9 a document.  
A map or plan which 19 intended to be used or unich  
may be used as evidence, is a document.  
  
A writing containing directions or instructions is  
  
a document...  
  
  
Page 226:  
Explanation 2, ~ Whatever is expressed by means of  
letters, figures or marks as explained by  
mercantile or other usage, shall be deemed to be  
  
expressed by such letters, figures or marks within  
  
the meaning of the section although the same m  
  
Illustration  
  
his name on the back of a 6411 of exchange  
  
A writ  
  
payable to his ord The meaning of the  
  
endorsements, as explained by mercantile usage, is  
that the bill is to be paid to the holder. The  
endorsement is a document, and must be construed in  
the same manner as if the words “pay to the holder  
or words to that effect had been written over the  
  
signature.  
Evidently, this definition though wide in nature,  
needs to contain explicitly a provision in the light of the  
  
recent electronic developments. The Law Commission in its  
  
42nd Report, para 2.56, observed that :-  
  
"2.56 The main idea in all the three Acts 16 the  
same and the emphasis is on the “matter” which ts  
recorded, and not on the aubatance on which the  
matter is recorded. We feel, on the whole, that  
  
the Penal Code should contain a definition of  
  
  
Page 227:  
1.08  
  
counterfe  
  
“document” for its own purpose and that section 29  
  
should be retained.  
  
The two Explanations attached to section  
29 are, we think, helpful. The first Explanation  
helps to clear ambiguity about the import of the  
word “evidence” used in the section, and is in  
  
accord with the view of the Courts.”  
  
Tt may be noticed that in the Forgery and  
  
ting Act, 1981 (U.K.), Section 9(1), the term  
  
‘ingtrument’ means:  
  
Arlidge &  
  
in this part of this Act ‘instrument’ means -  
  
(a) any document, whether of a formal or informal  
  
character:  
  
(b) any stamp issued or sold by the Post office:  
  
() any Inland Revenue Stamp; and  
  
(a any disc, tape, sound track or other  
device on or in which information is  
recorded or stored by mechanical,  
  
eloctronic or other moana  
  
Parry on Fraud,(2) pr.S-012, observes  
  
“in particular it is submitted that the words “any  
device on or in which information is recorded or  
stored by mechanical, electronic or other means” in  
section @(1)(d) include the magnetic stripe on a  
  
payment card: the stripe ie clearly a device on  
  
  
Page 228:  
n: 22a  
  
which encoded information about the holder's  
  
account is recorded and stored. The same must.  
  
apply to electronic chip used on “emart” card.  
Since the stripe or chip is attached to the card,  
it Follows that information 1s also stored on the  
card; but is the card a “device”? It te submitted  
that if it is not @ “document” within section  
section 8(1)(d). It is clear that cheque caras ang  
credit cards, at least, are intended to qualify as  
‘instruments because they are expressly included  
among the spectal category of —inetrumente  
possession of which can be an offence. Other forms  
of payment card are not so included; but it would  
be strange if 8 credit card were an instrument and  
a debit card were not.”  
  
.  
  
11,08 A survey of definition of ‘Document’ in other  
  
legislations would be of great use. According to Black's Law  
  
Dietionary,(3) ‘Document’ means-  
“An instrument on which is recorded, by means of  
letters, figures, or marks, matter which may be  
evidentially used. In this sense the term  
document” applies to writings; to words printed,  
Tfthographad, or photographed; to seals, plates or  
stones on which inscriptions are cut or angraved;  
to photographs and pictures; to maps or plane. The  
inscription may be on stone or gems, or on wood, as  
  
well as on paper or parchment.”  
  
  
Page 229:  
=: 228 r=  
  
under Section 3 of the Indian Evidence Act, 1872, the  
  
\*pocument’ “means any matter expr  
  
term  
  
d or described upon any  
  
substance by means of letters, figures or marks, or by more  
  
than one of thos:  
  
used, for the purpose of recording that matte:  
  
Tilustrations  
  
means, intended to be used, or which may be  
  
A writing is a document: words printed 1ithograohea  
  
or photographed are document:  
  
A map or pian is a document;  
  
An inscription on a metal plate or stone is a  
  
document;  
  
A caricature is a document.  
  
Under section 10(1) of the Civil Evidence act, 1968  
  
the word ‘document’ is defined as follow  
  
“Documen:  
  
which may be put forward ae evidence.  
  
(UK)  
  
A written paper or something similar  
  
"Document’ includes in addition to a document in  
  
writing.  
(a) any map, plan, graph or drawing:  
  
(b) any photograph:  
  
(c) any disc, tape, sound track or other device in  
  
which sounds or other data (not being  
  
images) are embodied 60 as to be capable (with or  
  
without, the ald of somo other eauipment.) of  
  
being  
  
  
Page 230:  
reproduced from it; and  
(4) any film, negative tape or other device in  
which one or more visual Images are embodied 50 as  
to be capable (as aforesaid) of being reproduced  
  
from it.”  
  
Under clause 11 of the Companies (Amendment) B11),  
1996 the following Section was proposed to be inserted in the  
company's Act, 1956:-  
  
“810A. [1) Notwithstanding anything contained in  
  
any other law for the time being in force, ~  
  
(a) @ micro film of @ document or the reproduction  
  
of the image or images embodied in such micro film  
  
whether enlarged or not); or  
  
(b)  
  
fc) a statement contained in a document and  
included in a printed copy produced by a commuter  
(hereinafter referred to as a computer orintout),  
  
ction 2 are  
  
if the conditions mentioned in sub:  
satisfied  
  
shall be deemed to be also a document,  
for the purposes of this Act  
(2) The conditions referred to in sub-section (1)  
in respect of a computer print-aut shall be the  
following, namely:  
(a) the information contained in the statement  
reproduced or is derived from returns and documents  
  
Filed by the company on paper or on computer  
  
  
Page 231:  
m2 227 =  
  
network, floppy, diskette, magnetic, cartridge  
  
tape. CD-rom or any other computer readable media;  
  
().  
  
(od  
  
11,08 Tt 8, thus, evident that there is a trend of  
widening the scope of the term ‘document’ having regard to  
the latest scientific inventions in the field of electronics  
Consequently, there is apparent need to combat frauds  
committed through computers. This would give rise to the  
need to exhaustively define the term ‘document’ under section  
28, IPC. In this connection, it is pertinent to refer to  
Clause 11 of the 8111 which seeks to amend section 29 of the  
Penal code.  
  
Under sub-clause (a) of clause 11 of the Bill, ft  
  
is provided that in section 29 of the Penal Code, for the  
  
words “expressed or described”, the words “expressed,  
described or recorded” shall be substituted. By virtue of  
Sub-clause (b) of clause 11, for the words “figures or  
marks”, the words “figures, images, marks or sounds” shall be  
  
Substituted in section 29, IPC.  
  
11.07 The Law Commission in ite 42nd report, para 2.57  
recommended for a slight alteration of the language of  
Section 29 of the Penal code, Tt observed that the  
  
definition under section 29 relating to the term “document  
  
'8 wido onough to cover avery Kind of documont. Sums doub!,  
  
  
Page 232:  
2 298  
  
was however, noticed as to whether it includes mechanical  
ecords of sound or image. It recommended that it should  
include such, as mechanical devices 1ike “tape-records” which  
are in frequent use. It referred to the decision of the  
Supreme Court in Pratap Singh Kairon, (AIR 1964 sc 72, 26,  
pr.15) that a conversation recorded on a tape ts good  
evidence, and obviously if a person forges a tape record, ne  
ought to be punishable the same way as a person preparing 4  
false document. The Commission recommended to make this  
  
clear by adding an illustration to section 29. The  
  
Commission recommended that section 29 should be revised to  
  
read as followe:-  
  
29. Document - The word ‘document’ denotes any  
matter recorded upon any substance by means of  
letters, figures, or marks, or by more than one of  
those means, intended to be used, or which may be  
  
used, as evidence of that matter.  
  
Explanation 1. - It is immaterial by what means or  
«on what substance the letters, Figures or marks  
are formed, or whether the evidence is intended  
  
for, or may be used in, a Court of Justice or not.  
  
  
Page 233:  
=: 229 -  
  
Iustrat ions  
  
The following are documents-  
(a) a map or pian;  
  
(b) a caricature;  
  
(c) @ writing on a metal plate, stone or tree;  
  
(9) @ ff lm, tape or other device on which sounds or  
  
images are recorded.  
  
Explanation 2, = Whatever is expressed by means of  
letters, figures or marks as understood by  
mercantile or other usage, shal] be deemed to be  
recorded by such letters, figures or marks within  
the meaning of this section, although the same may  
  
not be actually expressed.  
  
Ti lustration  
  
A writes his name on the back of a bi1? of exchange  
payable to his order. ‘The meaning of the  
endorsement as understood by mercantile usage, is  
that the bill is to be paid to the holder. The  
endorsement is document, and must be construed in  
the same manner as if the words ‘pay to the holder’  
or words to that effect had been written over the  
  
signature  
  
  
Page 234:  
1 230  
  
The proposed substitution of the words “expressed  
  
or described” under sub-clause (a) of clause 11 of the BilT  
  
by the words “expressed, described or recorded” are thus  
intended to widen the scope of the term “document” by  
  
“recorded”. one  
  
bringing within its import any matter e  
  
may argue that by virtue of the ineertion of the word  
  
recorded” in the definition of term ‘document’ under section  
29, IPC that any matter recorded on any disc, tape, sound  
track or other device on or in which information is recorded  
or stored by mechanical, electronic or other means would fat?  
within the ambit of the proposed amended definition of  
‘document’ vide clause it of the 8111, Nevertheless, the  
matter is arguable both ways. Accordingly, it would be  
advisable to define the term ‘document’ on the lines of  
Gefinition of ‘document’ given under section a(1)(d) of the  
  
Forgery and Counterfeiting Act, 1981 (UK).  
  
11.08 Therefore, the term ‘document’ as defined in  
Section 29, IPC may be enlarged so as to apecifically include  
therein any disc, tape, sound track or other device on or in  
which any matter is recorded or storec by mechanical,  
  
Slectronic or other means. These words also find place in  
  
Sec.a(1)(d) of the Forgery and Counterfeiting act, 1981(U.K.}  
‘oted above. In order to achieve this purpose, in addition  
to the amendment proposed to be added vide clause 11 of the  
8511, we recommend that a new Explanation 2 bo also insertod  
  
in Section 29, IPC on the following lines:-  
  
  
Page 235:  
“explanation 3. = The term “document” also  
  
includes any disc, tape, sound track or other  
  
device on or in which any matter or image or sound  
  
is recorded or stored by mechanical or other  
  
The aforesaid proposed amendment in section 29  
would also necessitate consequential amendment of the term  
“document” under section 3 of the Indian Evidence Act, 1872  
  
on the lines indicated abov!  
  
  
  
Page 236:  
=: 232 =  
  
FOOT NOTES  
1 Audit Commission (U.K.)  
2 Arlidge & Parry on Fraud, -edn, ch.§ pr.6.012  
  
Black's Law Dictionary, Fifth Edn., p.432,  
  
  
  
Page 237:  
s: 233:  
  
CHAPTER XI.  
  
THE INOTAN PENAL CODE (AMENOMENT) BILL, 1978  
  
The Indian Penal Code was 91  
  
don the statute  
  
book in the middle of the last century and the title “Indian  
  
nal Code" given by the then Law Commission refers to the  
  
basic criminal law. The Indian Penal Code which is the basic  
penal law of India, is thus more than 134 years old and the  
task of bringing it to date was taken up by the Law  
Commission of India in the year 1969 and it presented its  
42nd Report. in 1971. The Government after a careful  
examination of the recommendations made by the Law  
commission, introduced a comprehensive Bill in the Rajya  
Sabha in 1972. & Joint Parliamentary Committee scrutinised  
the same for nearly four and a half years After  
finalisation by the Parliamentary Committee, the Bi1) was  
passed in the Rajya Sabha in November, 1978. However, it  
  
could not be passed in the Lok Sabha as it was dissolved in  
  
1979. For some reason or the other this 811! was not again  
introduced, The Government. of India, however, made a  
reference to the Law Commission of India to undertake a  
comprehensive revision of the IPC and to come up with  
  
appropriate recommendations.  
  
12.02 Since the provisions of the Sill are mainly based  
on the recommendations made in 42nd Report, we propose to  
  
examine the racommendations made by the Law Commission 1m its  
  
  
Page 238:  
oh 234 ie  
  
Ens report and the chaAges in the circumatances in the  
  
fosnwnile and make our own a:  
  
sement of the necessity to  
fring about the changes and also indicate modifications to  
fre various clauses in the B11] wherever it is necessary.  
  
In the present 8111 there are 151 amendments, 95  
  
few sections 130A to 140 are substituted to the  
  
postreurions, 32 omissions and 25 insertions. Apart from  
he  
  
qisting Chapter VIT and sections 490, 491 and 492 are  
jubstituted under Chapter XIX by changing the heading ai  
offences against Privacy’ instead of the existing heading  
‘criminal Breach of Contracts of Service’. In addition, two  
yew chapters, namely, Chapters VB and XVIIIA are inserted and  
thapter XXIII containing section 511 under the title  
“Attempts to Commit Offences” has been omitted. Sections 161  
10 165A have been omitted by and transposed to the Prevention  
Mf Corruption Act, 1988. Besides, some of the sections or  
Hlauses or sub-clauses are renumbered. After introduction of  
the proposed Bi11, sections 228A (Disclosure of identity of  
the victim of certain offences, etc.) and 3048 (Dowry death)  
fere inserted by Acts 43 of 1983 and 43 of 1986,  
  
tions 375 and 376 (Sexual offences) and  
  
spectively.  
eading of the chapter were substituted by sections 375, 376.  
76A, 2768, 376C and 376 by Act 43 of 1963. A partial  
wendment to Explanation 1 to section 405 has been made. In  
dition, a new chapter XXA containing a new section 498A was  
  
Nerted by Act 46 of 1983  
  
  
Page 239:  
=: 238  
  
There are 207 clauses in the 1978 8171. Clauss  
  
8, 42, 16, 39, 40, 44, 46, 47, 49, 50, 51, 52, 55, 58,  
  
57, 58, 60, 61, 62, 65, 69, 70, 71, 72, 79, 74, 75, 76, 77,  
18, 79, 80, 81, 82, 83, 84, 85, 06, 87, 88, 89, 90, 92, 95,  
96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108  
409, 112, 193, 114, 115, 118, 197, 118, 120, 121, 126, 127,  
129, 132, 133, 138, 136, 138, 139, 140, 141, 142, 143, 147,  
148, 150, 153, 184, 188, 157, 158, 185, 186, 189, 191, 192,  
  
193, 195, 200, 202, 205 and 207 are only inconsequential.  
  
The changes proposed in the other clauses  
contemplate to bring about the basic penal statute of this  
country updated to remove lacunae and make it useful for  
meeting the optimum needs. Several new offences are proposed  
to be included which would result in large scale changes in  
  
the First Schedule of the Code of Criminal Procedure.  
  
We have carefully perused these clauses of the 8111  
and we find that some of the changes contemplated 90 beyond  
the recommendations made by the Law Commission in its 42nd  
Report. Therefore, we think it necessary to examine each of  
  
these clauses as indicated already.  
  
Clauses 2 to 8  
  
12.03 chapter IT provides for general explanations.  
Sections 6 to 52A contain various definitions and  
  
explanations. The object of definition is to avoid the  
  
  
Page 240:  
necessity of frequent repetitions in describing the  
subject~matter to which the word or expression is intended to  
apply. The definitions may be restrictive and exhaustive but  
sometimes may be inclusive and exclysive. In other words, a  
definition may be inclusive and exclusive, j.e., it may  
include certain things and exclude others. It is well  
settled that the definition is not to be read in isolation  
but must be read in the context of the phrase which defines  
because the function of a definition is to give precision and  
certainty to a word or a phrase which would otherwise be  
vague and uncertain. In The Vangvard Fire and General  
Insurance Co. Ltd.. Madras vs. M/s Fraser and Ross and  
  
It is well  
  
another (AIR +1960 SC 971), the court observed -  
settled that all statutory definitions of abbreviations must  
be read subject to the qualification variously expressed in  
the definition clauses which created them and it may be that  
even where the definition is exhaustive inasmuch as the word  
  
na certain thing, it is possible for  
  
defined is said to me:  
the word to have a somewhat different meaning in different  
ections of the Act depending upon the subject of the  
  
context”.  
  
Section 6 lays down that throughout the Code (IPC),  
  
every definition of an offence, every pena) provision, etc.,  
  
shall be understood subject to the exceptions contained  
the chapter titled “General Explanations”, though those  
exceptions ars not repeated in such definition, penal  
  
Provision or ilTustration.  
  
  
Page 241:  
237  
  
Section 7 adds that every expression which is  
  
explained in any part of the Code, is used in every part of  
  
the Code in conformity with the explanation.  
  
In these sections, various words and explanations  
  
used in the Code are defined.  
  
The Law Commission, in its 42nd Report, clearly  
  
observed that neither the definitions nor the general rules  
  
of construction contained in General Clauses Act are  
applicable to the Indian Penal Code except to a very 1imited  
extent but, however, noted that te some extent there is  
overlapping resulting in duplication which can be removed by  
expressly providing that the General Clauses Act shal) apply  
  
for the interpretation of the Code. To that extent, the  
  
Commission recommended the omission of certain sections  
containing the definitions which are there in the General  
Clauses Act also. In this view, the Law Commission  
recommended deletion of sections 8, 9 and 10 which define  
  
“gender’, ‘number’, ‘man’, ‘woman’ and section 11 defining  
  
‘person’. In the 8111, by virtue of clause 5, these sections  
8, 9 and 11 stand deleted since these expressions are in the  
  
same terms as they are found in the General Clauses act.  
  
A perusal of the General Clauses Act, 1897 would  
Show that the definitions and the General aules of  
  
Construction contained therein are not specifically made  
  
  
Page 242:  
2 238 2+  
  
apolicable to the Indian Penal code except to a very Timited  
extent. It 16 well accepted that a1? penal statutes are to  
pe construed strictly and that the court mst see that any  
act or omfasion charged of, amounts to an offence within the  
plain meaning of the words used in the Code and the word  
should not be strained in construing the pena? statutes, its  
cardinal principle being that in case of doubt the  
construction favourable to the subject should be preferred.  
the framers of the Indian Penal Code had in view this general  
scope of the substantive law in incorporating the definitions  
In the chapter of Genera! Explanations, It 1s also an  
accepted principle chat the essence of a penal law ie to be  
qxnaustive on the merits in respect of which it declares the  
Yew. In 80 construing very often the meaning and the object  
Uunderiying the definitions with reference to the offence  
\eharged assumes importance. To determine that a case 1s  
‘within the anbit of the statute, its language must be  
lexoricit and facititate the court as to what to say and how  
[te intersrot. Having regard to these aspects, it 1s better  
Wo retain the definitions in the Penal Code instead of  
  
Weitting them as recommended by the Law Commission in its  
  
Wino report. In the result, we do not recommend any changes  
J reections 8, 9 and 11. Consequently, clauses 2 to 8 of the  
  
BB have to be deleted.  
  
=~  
Mies  
  
MMB, by virtue of this clause, sections 18 to 21 are  
  
[BBP co be substituted. existing section 18 says- “India  
  
  
Page 243:  
o2 238:  
  
means the territory of India excluding the State of Jammu &  
Kashmir. As pointed out by the Law Commission, there is a  
  
need to amend this definition to make it clear that the  
  
Indian Penal Code extends to the territorial waters of India  
in the same manner as it extends to the land territory. The  
Law Commission, in its 42nd Report suggested an amendment to  
section 18, namely, “India” means a territory of India  
including territorial waters but does not include the  
territory of Jammu & Kashmir.” In recommending this  
amendment, the Law Commission laid more stress jn extending  
  
the Code to the land territory as well as internal waters of  
  
India. Though clause 2 has more clearly covered the  
territorial jurisdiction, it ie silent as to the extension of  
the Code to the State of Jammu & Kashmir. It has been voiced  
in many workshops as wolt as observed in court judgments and  
Suggestions from the members of legal fraternity ang jurists  
  
nN Penal Code to the  
  
to extend the appiicability of tnd  
entire country (including Jammu & Kashmir). Though this is a  
Taudable object, new section 18 is not in conformity with the  
same.  
  
The existing section 1 read:  
  
1 "the title and extent  
Of operation of the Code- this Act shall be called the Indian  
Pena) Code and shall extend to the whole of India except the  
State of Jammu 4 Kashmir”. The words “extend to the whole of  
India" were introduced ty way of an amendment in the year  
1950 and the words “except the State of Jammu & Kashmir” were  
Substituted in the year 1951. the existing section 18  
  
Gefines India as “India means the territory of India  
  
  
Page 244:  
-1 240 :-  
  
excluding the State of Jammu & Kashmir”. tt may be note  
that this section was substituted in the year 1950. ay  
reading these two sections together it appears that the  
intention was not to extend the Penal Code to the state of  
vanmu & Kashmir as can be noticed from section 1, But India  
  
as defined in section 18 is somewhat incongruous, i,e., as  
  
the territory of India excluding the state of Jammu 4  
Kashmir, However, in the B11) the existing section 1 is not  
  
touched upon whoreaa the oxtating definition of India as  
  
found in section 18 is sought to be substituted by ne.  
section 18 which reads, “the word ‘India” wherever it occurs  
in this Code means the territories to which this code  
extends”. When the existing section 1 is not modified then  
the definition of India in the new section does not carry the  
matter further because it says that India means the  
territories to which this Code extends, thereby clearly  
implying that this Code would not be applicable to the state  
of Jammu & Kashmir. In the 42nd Report, the Law commission  
made a recommendation for amendment of section 18 in a  
Slightly different way than what we find in the new section  
18 sought to be substituted under the 8111. Having examined  
the matter carefully and also bearing in, mind that in the  
8111 there is no reference to section 1 at all, there is no  
  
Reed to substitute the existing section 18 by the proposed  
  
Pew Section. However, to make things clear if necessary and  
£2 remove any ambiguity, namely, that the restricted meaning  
  
Sf India for the purpose of applicability of this Code would  
  
  
  
Page 245:  
<r tate  
  
be the territories to which this Code extends, as found in  
the existing section 1, the proposed new section 18 may  
  
auitably be worded.  
  
The existing section 19 defines ‘judge’ and section  
  
20 ‘Court of Justice’. There was some confusion as to the  
interpretation of the expression ‘judge’. Section 19 ts  
sought to be substituted by the new section. The existing  
  
section 19 reads-  
“Judge- the word “judge” denotes not only every  
person who is officially designated as a Judge, but  
150 every person-  
who 8 empowered by Taw to give, in any  
Yegal proceeding, civil or criminal, definitive  
  
tes  
  
Judgment or a judgment which, if not app  
  
against, would be definitive, or a judgment which  
  
is confirmed by some otner authority, would be  
definitive, or  
  
who is one of a body of person, which  
body of persons is empowered by law to sive such a  
  
Judgment.”  
  
The Law Commission in its 42nd Report noticed some  
lacunae in this and recommended that iTlustrations can be  
omitted and section suitably be amended. Now the section  
  
that is sought to be substituted reads as follows-  
  
  
Page 246:  
not only every person who  
  
“The word “judge” denot  
is officially designated as a Judge, but also-  
4) every person-  
  
(4) who 48 empowered by law to give, in  
any Tegal proceeding, civil or criminal, a  
definitive judgment, or a judgment which, if not  
appealed against, would be definitive or a judgment  
which, if confirmed by some authority, would be  
definitive, or  
  
(ii) who is one of a body of persons,  
which body of persons is empowered by law to give  
such a judgement; and  
  
(b) a magistrate  
  
While retaining the emphasis on giving a  
"definitive judgment’ and while recommending it, the only  
change brought out is inclusion of magistrate. We endorse  
  
the changes sought to be introduced by the 8¥11.  
  
The existing section 20 defines a “court of  
  
justice” as meaning a judge or body of judges empowered by  
  
Taw to act judicially when such judge or body of judges is  
acting judicially, The Law Commission, in its 42nd Report,  
having examined the language of the Section, observed that  
the definition is unnecessarily tengthy and suggested that  
  
the same may be simplified. As mentioned above, section 19  
  
  
Page 247:  
243  
  
defining ‘judge’ as we find in the 8111 comprehensive and al?  
  
words need not be repeated again. Section 20, as wa  
  
thos  
  
find in the 8411 after the change is simple and sufficient.  
  
The existing section 21 defines ‘public servant’.  
The same contains the categories of persons which come within  
the meaning of ‘public servant’. The concept of ‘public  
servant’ is quite important from the point of view of  
administration of criminal justice, The definition of  
‘public servant’ in section 21 has nexus to section 197  
or.P.c, whereunder sanction is necessary for prosecuting a  
public servant, Now, it is well settled that if the act  
complained of is connected with official duties of the  
accused and if reasonably found that it was done in the  
course of discharging of his official duties, section 197 +s  
attracted and sanction is essential for his prosecution.  
Therefore, it becomes necessary to find out whether the  
  
tion 21. The  
  
accused is a public servant as defined in  
  
rved  
  
Law Commission having examined the existing section ob  
  
oF  
  
that the elaborate enumeration of various categorie  
  
1d on the  
  
public servants in section 21 ie primarily b  
  
functions discharged by such servants and further noted that  
  
there {s considerable overlapping particularly after the  
recast of clause twelve by the amending Acts of 1958 and 1964  
land that some of the clauses require drastic revision In  
  
the Bi11, the new section 21 reads as follows~  
  
  
Page 248:  
1 2a  
  
21. “Public Servant” means,-  
(5) any person in the service or pay of the  
Government, or remunerated by the Government by  
fees or commission for the performance of any  
public duty;  
(45) any person in the service or pay of a local  
authority:  
(434) any person in the service or pay of a  
corporation owned or contro}led by the Government;  
(iv) any judge, including any person empowered by  
Jaw to discharge, whether by himself or as a member  
of a body of persons, any adjudicatory functions;  
(/) any person specially authorised by a Court of  
Justice to perform any duty in connection with the  
administration of justice, including a liquidator,  
receiver or commissioner appointed by such court:  
(vi) any arbitrator or other person to whom any  
cause or matter has been referred for decision or  
Report by a court of justice or by a competent  
author ‘ty:  
(vii) any person employed or engaged as an examiner  
or as an invigilator by any public body in  
connection with any examination recognised or  
approved by or under any Taw.  
  
Explanation-- The expression “public  
  
body", includ  
  
(2) a University, Soard of Education or.  
  
other body or institution, either  
  
  
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established by or under a Central, state  
or Provincial Act or constituted by the  
  
Government;  
  
(©) @ local authority:  
(vt14) any person who holds an office by virtue of  
  
which he is empowered to prepai  
  
+ publish, maintain  
or revise an electoral roll or to conduct an  
election or part of an election; or  
  
(4x) any person who holds an office by virtue of  
which he is authorised or required by Jaw to  
  
perform any public duty.  
  
Explanation Persons falling under any of the  
above clauses are public servants whether appointed  
  
by the Government or not.  
  
Explanation 2.- A person calling under any of the  
above clauses by virtue of any office or situation  
he fe actually holding is a public servant,  
whatever Tegal defect there may be in his right to  
  
hold that office or situation.  
  
The Law Commission in its 42nd Report having  
carefully examined the various clauses in section 21  
Suggested certain changes which are incorporated in the new  
Section. In this context, the Law Commission has examined  
  
various judgments of the High Courts and Supreme Court.  
  
  
Page 250:  
The corresponding provisions in existing section  
reads as follows~  
  
“Twelfth - Every person -  
  
8) in the service or pay of the government or  
  
remunerated by fees or commission for the  
  
Performance of any public duty by the government.  
  
(b) in the service or pay of Tocal authority, a  
  
corporation established by or under a Centra  
  
Provincial or State Act or a Government company as  
  
defined in section 617 of the Companies Act, 1956  
  
(1 of 1986),  
  
It can be seen that in this clause there is  
emphasis on public duty In G.A.Monterio v, The State of  
Admer , (1956 SCR 682), the Supreme Court indicated that the  
requirements of pay and public duty are cumlative, The  
court observed, “If therefore, on the facts of a particular  
case, the court comes to the conclusion that a person is not  
only in the service or pay of the government but is also  
Performing a public duty he has delegated to him the  
functions of the government or is in any event performing  
duties immediately auxiliary to those of some one who is an  
  
officer of the government and is, therefor, an officer of the  
  
Sovernment within the meaning of section 21(9), Indian  
  
Code. The Supreme Court reiterated the same view in State of  
  
Almerv,\_shivii al, (1959 supp(2) scR 739). after noting  
  
  
Page 251:  
=: 247  
  
these observations, the Law Compission opined that the  
expression “public servant” cannot be easily defined and no  
  
court has attempted any such definition.  
  
Taking into consideration various aspects mentioned  
above, the Law Commission recommended in its 42nd Report  
substitution of section 21. The definition of “public  
servant” as found in the B11] (new section 21) elaborately  
contains the recommendations made by the Law Commission  
However, the Law Commission specifically mentioned one clause  
to be included, namely- “any person who is a Member of  
Parliament or of a State Legislature”. In view of the  
various political developments and where numerous instances  
of criminalisation of politics are alleged it ts necessary to  
have a provision, but in what manner can it be effectively  
  
done?  
  
The existing provisions to the effect that any  
  
Person receiving remuneration for discharging public duty m  
in a general way cover them since they are receiving some  
remuneration and also discharging a public duty. The Law  
  
rly recommended that these  
  
Commission in its 42nd Report ct  
People should specifically be included as public servants  
under the relevant provisions. gut the question would be  
whether or not suitable amendments are also necessary to  
section 19 of the Prevention of Corruption Act and  
correspondingly section 187 of Cr.P.c. because a reading of  
  
these provisions would show that the emphasis is on the  
  
  
Page 252:  
government service and the power to remove the delinquent  
officer by the State Government or the Central Government as  
the case may be. But in the case of legislators these  
provisions providing for grant of sanction as such do not  
contemplate as to who should be the sanctioning authority in  
case a legislator is to be prosecuted for an act of criminal  
misconduct while discharging or purporting to discharge his  
official duties which to whatever limited extent may be a  
public duty performed by them, namely, being members of the  
  
Jegislatures. It is but logical that the power should rest.  
  
Jing officer of the legislature since the  
  
only with the pre:  
proceedings or any acts connected with such proceedings  
including voting or defecting also are within the privileged  
category and it is only the presiding officer who can take a  
decision whether the act has any nexus of public duty of a  
Jegistator. Consequently, in case of legislators committing  
misconduct, the sanctioning authority can be only the  
presiding officers of the legislatures, Unless such changes  
  
nection are also brought  
  
in the provisions providing for  
about it may not be appropriate to just include them as  
If for  
  
nt provision:  
  
Public servants in the rete  
arguments sake no sanction would be necessary under section  
  
ection 197 of  
  
19 of the Prevention of Corruption Act or  
cr.P.c., then it would be fronical to say that only such  
Protection can be extended to the other public servants and  
Rot to the members of the legislatures who are also by virtue  
of performance of public duty fall in the category of public  
  
Servants. Unless such major changes ara brought about, it Je  
  
  
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1 249 io  
  
not desirable and highly inappropriate to just merely bring  
  
them within the purview of public  
  
rvants under section 21  
by inserting @ new clause and make them amenable to any of  
  
the relevant penal provisions.  
  
Clause 10  
12.05 The existing section 25 defines the expression  
“fraudulently” ~ @ person is said to do a thing fraudulently  
  
if he does that thing with intent to defraud but not  
  
otherwi The oxpression “fraudulently” occurs in few  
sections, namely, 206, 207, 208, 242, 243, 246, 247, 252,  
263, 261, 262, 263 and sections 421 to 424. The existing  
  
section 23 explains the terms “wrongful gains” and “wrongful  
loss". Section 24 says that @ person does a thing  
dishonestiy if he does it with the intention of causina  
wrongful gain to one person or wrongful loss to another  
person. These definitions are in clearer terms. But the  
same cannot be said about the definition of “fraudulently  
The courts, however, observed that to attract the definition,  
there must be some advantage on the one side with the  
corresponding loss on the other. The Supreme Court in  
ws.putt vi State of U.P. (1968 (1) SCR 493) observed that  
the words “with intent to defraud” in section 28 indicate not  
a bare intent to deceive but an intent to cause a person to  
act or omit to act, as a result of deception played upon him,  
  
to his advantage.” Having examined various views, the Law  
  
  
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=: 250 :=  
  
Commission recommended the change in the definition, so that  
the meaning can be brought out in clearer terms. The  
  
amendments suggested in the Bi1) serve the purpose  
  
clause it  
  
12.08 The existing section 29 defines a document and  
there are two Explanations. Section 3 of the Evidence Act  
  
and section 3(18) of the General Clauses Act also define the  
  
word ‘document’. A reading of th three sections would  
  
show that the main idea in all the three Acts is the same and  
  
the emphasis is on the matter which is recorded. The Law  
  
Commission in ite 42nd Report examined the provisions in al?  
these Acts and recommended an amendment. It also observed  
that the existing definition with its Explanations is wide  
enough to cover every type of document. A doubt was  
expressed whether it includes mechanical records of sound or  
image like tape recording etc., which are in frequent use.  
Taking these aspects into consideration, the Law Commission  
suggested slight alteration in the language of the definition  
to make it& intention clear. It is on this basis, in clause  
  
11, the words “particularly expressed, described or recorded’  
  
marks or sounds" are sought  
  
and the words “figures, imag  
to be substituted. A detailed discussion on this aspect can  
be found in Chapter XI entitled “Document-scope of its  
Definition™. In view of the changes in the audio and video  
technology and computers, it is recommended that another  
  
Explanation (3) can be added to the existing section. so we  
  
  
  
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rast ce  
  
recommend that Explanation (3) namely, “The term document  
also includes any disc, tape, sound track or other device on  
or in which any matter or image or sound is recorded or  
  
stored by mechanical or other means”.  
  
Clause 12  
  
12.07 Under this clause, existing sections 31, 32 and 39  
which define the words “will” referred to in the Act are  
Sought to be omitted. A perusa} of the 41st Report of the  
  
Law Commission shows that the omission of this  
  
ction was  
recommended on the basis that they are defined in the General  
Clauses Act. Having given our earnest consideration, we have  
already noted that such words which are defined in the  
General Clause Act and which are specifically found in the  
other provisions of the IPC should be retained for several  
reasons already mentioned. For the same reasons we are of  
the view that there is no harm in retaining existing sections  
  
31, 32 and 33 and Clause 12 has to be omitted.  
  
Clause 13  
  
12.08 By virtue of this clause the words “several  
persons” wherever they occur are sought to be substituted by  
the words “two or more persons”. A perusa) of some of the  
Judgments would show that the courts felt that there is some  
ambiguity in the language of the section, particularly in  
  
respect of the meaning to be given to the expression “several  
  
  
Page 256:  
m1 282 :-  
  
persons”. Section 34 embodies the principle of constructive  
liability in the doing of a crimina? act, the essence of that  
Viability being the existence of a common intention. Section  
34 explains that when a criminal act is jointly done by  
several persons who are actuated by common intention, in  
furtherance of that intention each of then is liable for it  
as if the whole of it had been done by him alon starting  
  
from Raredra Kumar Ghosh vy, King Emperor, (AIR 1928 PCI)  
  
be  
  
na number of judgments rendered by  
  
uptil now there hi  
the courts about the scope of section 34. The expression  
“several persons” has been examined with reference to the  
question whether two persons should at least be there as  
participants for section 34 and whether a single known  
offender can be convicted by application of section 34 if the  
facts show that he afong with one unknown offender at least  
must have committed the offence. The Law Commission with a  
View to see that this ambiguity is not there recommended in  
its 42nd Report the substitution of the words “two or more  
persons” for the words “several persons” which expression is  
rather wide and vague. 8y carrying out this amendment the  
Janguage of section 34 becomes more explicit. For the same  
reason the expression “several persons” occurring in sections  
35 and 38 also can be substituted by the expression “two or  
  
more persons”.  
  
  
Page 257:  
clause 14  
  
12.09 Under this clause it is proposed to substitute  
  
ction 40 by another section. The existing section 40 has  
  
three clauses giving three different definitions of the  
  
sion “offence”. The First clause provides that except  
  
expr  
in the chapters in sections mentioned in clauses 2 and 2, the  
word “offence” denotes “a thing made punishable by the code”.  
  
Clause 2 lays down that the offences covered by Chapters IV  
  
and VA and also several sections enumerated therein, the ward  
“offence” denotes “a thing punishable under the Code or under  
any special or local law". According to clause 3, the word  
“offence” in respect of the eight sections mentioned therein  
has “the same meaning when the thing punishable under the  
special or local law {s punishable under such law with  
imprisonment for a term of six months or upwards, whether  
  
with or without fine.  
  
It has to be noted that the expression “offence”  
  
has a definite meaning. The existing section lacks clarity  
nor is it conducive. The Law Commiasion in its Report  
  
tion arises as to the meaning  
  
Pointed out that whenever a au  
  
of the word “offence” appearing in a particular section of  
  
the Code, one has to go to section 40 and go to the clau  
to find out where the section in question is mentioned. In  
the General Clauses Act, section 3(38) says that “offence  
Shall mean any act or omission made punishable by any law for  
  
the time being in force. The language in this definition is  
  
  
Page 258:  
sr 284  
  
precise and would be sufficient to cover all the offenc  
  
under the Penal Code since they are a result of an act or  
omission made punishable under the court. However, there are  
some sections having the expression “offences punishable with  
death or imprisonment for life The Law Commission  
suggested that there should be a separate definition for  
capital offence incorporated in section 40 which has to  
  
substitute the existing section. The expression “offence:  
  
punishable with death or imprisonment for 1ife" occur in many  
sections Tike 115, 118, 1208, 288, 269, 508, etc. It was  
suggested by the Law Commission and as proposed in the 8111,  
a new section 40 shall contain the definition of capita?  
offence wherever the expression “offences punishable with  
death or imprisonment for life” occurs. Even this expression  
has to be substituted by the words “capital offence” which  
  
would be more specific and from the .Billwe find in all those  
  
sections the expression “capit&l offence” had been used. The  
amendment by way of substitution of section 40 as proposed  
under clause 14 defining “capital offence is an appropriate  
change. In our considered view and as noted already, to make  
IPC as a self-contained Code, it would be better to have the  
definitions of the relevant words in IPC itself. The section  
40 as mentioned above is sought to be substituted on the  
ground that the word “offence” is clearly defined in the  
General Clauses Act and the definition of offence in the  
existing section 40 defining offence lacks clarity. In that  
View of the matter and to provide a definition in respect of  
  
the offences punishable with imprisonment for }ife and death,  
  
  
Page 259:  
=: 258  
  
section 40 is to be only substituted by the new section  
defining capital offences. Thereby if one want to know the  
  
section, one has to refer to the General Clauses Act which in  
  
sary. Therefore,  
  
the process while adopting may not be nec  
  
it is better to have the meaning of the offence as defined in  
the General Clauses Act also incorporated in that new section  
  
40 which shal? read as follows:~  
  
“Section 40- Offences which mean any act or  
omission made punishable by any law for the time  
  
being in force and “capita? offence” means offence  
  
for which death is one of the punishments provided  
by the law  
Clause 15  
12.10 The existing section 43 defines the exoressions  
“1tegai"- “legally bound to do” and lays down that the word  
  
“i}legal" is applicable to everything which is an offence or  
which fs prohibited by law or which furnishes ground for a  
civil action and a person is said to be “legally bound to do  
whatever is iTTegal in him to omit.” Under this clause in the  
Bill, this section is sought to be substituted by a new  
section having two clauses. The proposed section is in the  
following terns~  
  
"43.(1) A thing is “illegal” if ft is an offence or  
  
is prohibited by law or furnishes ground for a  
  
  
Page 260:  
2 286 :-  
  
civil action.  
(2) A person is “legally bound to do” a thing when  
he is bound by law to do that thing or when it is  
  
illegal in him to omit to do that thing.  
  
It can be noticed that according to the definition in the  
existing section a person is legally bound to do only what is  
“{1legat™ in him to omit and the word “illegal” is applicabie  
to everything which is an offence or which is prohibited or  
which furnishes ground for civi} action." The Law Commission  
  
also noticed that these definitions are in a circle and nave  
  
led to some difficulties as is seen from decisions rendered  
  
by the courts including the privy council in Ali Mohomed  
  
Adamalli v, Emperor, (AIR 1945 8C 147), it was recommended  
by the Law Commission in the 42nd Report to omit the  
definition of the expression “offence” in the Penal Code and  
Go by the wider definition of the word in the General Clauses  
Act as it would obviate the difficulty pointed out by the  
courts. However, there may be situations creating  
difficulties if the omission to do What is enjoined by law is  
not made an offence under the particular Act in question  
The Law Commission in its 42nd Report observed in other words  
under the present definition of the term “legally boung to  
do” unless a law which enjoins a person to do a particular  
thing also lays down, in so many words, that the person shal?  
  
Not omit to do that thing, then the person cannot. he  
  
  
Page 261:  
287 :~  
  
considered “legally bound to do” that thing. In this view a  
new section is sought to be substituted which appears to be  
  
sound.  
  
Clouse 16  
  
12.0 Under this clause, existing sections 48, 42 and 50  
  
defining words “vessel, year, month, section  
  
spectivety  
are sought to be omitted for the reasons that they are  
defined in the General Clauses Act. for the same reasons  
mentioned above in respect of clause 12, etc., the section  
need not be omitted and accordingly Clause 16 of the 8i11 has  
  
to be omitted.  
  
Glause 17  
  
12.12 The existing section 52 defines the word “good  
  
faith” and section 52A defines the word “harbour”. As per  
  
this clause, these two sections are to be substituted by new  
ections. In the existing section 52 the definition of “good  
faith” is different from that which we find in the General  
Clauses Act. In the General Clauses Act the term “good  
faith” is defined in the following terms-  
"A thing shal) be doomed to be done in good faith  
where it is in fact done honestly whether it is  
done negtigentty or not”.  
  
It can be seen that so far as the other laws are concerned,  
  
  
  
Page 262:  
=: 268 =  
  
the definition in the General Clauses Act appears to lay down  
that honesty of purpose alone is sufficient to make an act  
bona fide. Under the Penal Code the emphasis is on due care  
and attention. The Supreme Court in Harbhajan Singh v  
State of Punjab, (1965 ScR 235-243) while reversing the  
Judgment of the Punjab High Court, however, observed “the  
element of honesty which is introduced by the definition  
prescribed by the General Clauses Act is not introduced by  
the definition prescribed by section $2 of the Code”. It can  
also be noticed that the language of the definition in  
section 52 is in the negative form as compared to the  
language in the General Clauses Act, From the observation of  
the Supreme Court it can be seen that the Code does not  
expressly exclude the requirement of honesty. However, the  
Code stresses the aspect of care and attention but honesty is  
  
implicit in the idea of good faith. Therefore, taking the  
  
wa substitution of section $2 is an appropriate  
  
overall  
  
one, The existing section 52A was introduced in the  
1942 and lays down that except in sections 120 and 157 in the  
case in which the harbouring is given by the wife or husband  
of that person, the word “harbour” includes supplying 2  
Person shelter, food, drink, ete. The Law Commission naticea  
that special mention of sactions 130 and 157 in the general  
definition is inappropriate and section 52A has to be  
revised. A new section sought to be introduced under this  
  
clause in the 8411 reads as folloKs-  
  
  
Page 263:  
“S2A.Harbouring-The expression ‘harbouring’ means  
giving shelter to a person, and includes supplying  
‘a person with food, drink, money, clothes, ars,  
ammunition or means of conveyance or assisting a  
  
person in any manner to evade apprehension.”  
  
It can be seen that the expression harbouring in the proposed  
section is clear and explicit. Therefore, we recommend a  
  
substitution of sections §2 and 524.  
  
12.13. Under this clause, the existing section $3 is  
  
The proposed section 53 enumerates  
  
sought to be substitute  
various kinds of punishments. Under this proposed new  
  
section 4, new forms of punishments such as Community  
  
service, Disqualification from holding office, Order for  
payment of compensation and Public censure have bean added  
The sentencing policy and the proposed changes have already  
been discussed in detail in Chapter II. For the reasons  
stated in that Chapter, we do not endorse the addition of  
  
those new forme of punishments except public censure.  
  
Clause 19  
  
12.14 Under this clause sections 54, 58 and SSA of the  
Penal Code are sought to be omitted. Section $4 provides for  
  
commutation of sentence of death and lays down that in every  
  
  
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-: 260  
  
case in which sentence of death has been passed, the  
appropriate government may without the consent of the  
offender commute the punishment for any other punishment  
  
provided by IPC. Section §5 provides for commutation of  
  
sentence of imprisonment for life by the appropriate  
government for a term of imprisonment of fourteen years  
Section 5A defines appropriate government that can exercise  
the powers under sections 54 and 55, namely, the Central and  
State Governments, The Law Commission in its 41st Report on  
the Code of Criminal Procedure having examined section 402(1)  
of Cr.P.c, 1898 as well as sections 54, 55 and S6A of the  
Penal Code noticed that the appropriate government as  
mentioned in section 402(3) cr.P.c., 1888, is somewhat  
ambiguous. However, the Law Commission noticed that the  
provisions regarding commutation in sections $4, 55 and 454  
are mostly repeated in section 402, 1898 cr.P.c. and  
recommended that this duplication should be removed and the  
Jaw should be stated at one place, namely, Cr.P.c, In this  
view of the matter in 42nd Report, the Law Commission  
recommended deletion of these three sections. on that basis  
clause 19 is incorporated in the 8111. In the 1973 Code of  
Criminal Procedure this recommendation has been taken care of  
and incorporated in the newly numbered sections, namely, 432  
and 433, It can be noticed that the Law Commission in its  
41st Report on cr.P.c. 1898 mentioned that section 402  
should be revised incorporating soma of the orovinions of  
sections 54, 55 and SSA to remove the ambiguity particularly  
  
in respect of the definition of appropriate government, In  
  
  
Page 265:  
section 432(7) the meaning of the expression “appropriate  
government” 8 given and the ambiguity which is noticed by  
the Law Commission in the language in section 56 has been  
removed. So for as the commutation is concerned the  
provisions in sections $4 and 65, IPC have been duly  
incorporated in section 433, Cr.P.c. 1973. Therefore,  
clause 19 under which sections $4, 55 and 55A are sought to  
bo omitted is very appropriate in view of the changes in the  
  
cr.P.c. as noticed above.  
  
Clause 20  
  
12.15 Under this clause the words “imorisonment for 20  
years”, are sought to be substituted by the words “rigorous  
imorisonment for 20 years". This is necessary yyiew of  
  
some of the judgment as discussed in Chapter Ir, \*  
  
al 1  
  
12.36 By virtue of this clause, sections 64 and 65 are to  
be substituted by revised sections. These revised sections  
Provide for the sentence to be imposed in default for payment  
Of Fine etc., and the amendments are incidental and they may  
  
be carried out.  
  
Clause 22  
  
12.47 In view of the revised sections 64 and 65, section  
  
66 may bo omitted  
  
  
Page 266:  
=: 262  
  
Clause 23  
  
12.18 Under this clause section 67 and 88 are sought to  
be substituted by the revised sections providing for imposing  
imprisonment for default of payment of fine in case of  
offence punishable with fine only. In the amended sections  
  
it may be included.  
  
clause 24  
  
12.19 Under this clause the existing section 69 providing  
for termination of imorisonment on payment of proportional  
part of fine is sought to be omitted. This omission is  
  
necessary in view of the new revised section 63.  
  
Clause 25  
  
12.20 Under this clause the existing sections 70, 71 and  
72 providing for the limitation of time for levy of Fine and  
limit of punishment in case made of several offences are  
Sought to be substituted by revised sections. The revised  
sections are comprehensive on these aspects and the  
  
‘amendments may be carried out.  
  
  
Page 267:  
=: 263 2+  
  
clause 26  
  
12.21 Under this clause secticns 73 and 74 providing for  
solitary confinement by way of punishment is sought to be  
omitted. In earlier Reports the Law Commission has observed  
that this punishment is out of tune with the modern thinking  
Therefore, it has to be omitted as solitary confinement  
cannot be one of the general punishments under the statute  
like IPC. It may be necessary in case of indisciptine in the  
Jail for which the orison laws may provide for. therefore,  
  
it is necessary to omit these two sections.  
  
Clause 27  
  
12.22 Under this clause new sections 144, 748, 74¢ and  
TAD are sought to be incorporated. New section 744 provides  
for imposition of punishment of community service. We have  
already discussed this aspect in Chapter II. we have reached  
the conclusion that the punishment by way of community  
service cannot be executed in a practical manner. The  
Proposed section 748 provides for compensation to the  
victims. In our Report on Cr.P.c. we have proposed suitable  
amendments to section 357 providing for such compensation and  
a1) the aspects mentioned in section 748 in IPC have been  
  
‘incorporated thers. Therefore, we do not recommend addition  
  
°F incorporation of new sections 74a and 748.  
  
  
Page 268:  
=: 264  
  
Section 740, however, provides for imposition of  
  
the punishment by way of cenaure in addition to the  
  
substantive sentence under sub-section (3) and this is  
Limited to offences mentioned in Chapters 12, 13, sections  
272 to 276, 383 to 389, 403 to 408, 418 to 420 and offences  
under chapter 18 as well as offences under proposed new  
sections 420A and 462A under the 8111. These are ai?  
offences where persons entrusted with some public duties  
commit offences. Therefore, the additional punishment. by  
  
censure wi}! have salutary effect  
  
The new section T4D provides for imposition of  
additional punishment, namely, disqualification for holding  
office. This applies to public servants. We have discussed  
this aspect in Chapter I: and reached the conciusion to Teave  
this aspect to the concerned Departments for taking  
disciplinary action under the relevant Acts or rules.  
Therefore, we do not recommend incorporation of this new  
Section 74D, Consequently, the new section 74¢ providing for  
Additional punishment by way of censure can be numbered as  
  
74A and may be added.  
  
12.23 Proposed new section 94 - The existing section 24  
lays down that except murder and offences against the state  
Punishable with death, nothing is an offence which is done by  
  
@ person who is compelled to do it by threats which at the  
  
  
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time of doing {t, reasonably cause apprehension that instant  
death to that person Will otherwise be the consequence  
However, a rider is there to the effect that the person doing  
the act did not of his own accord place himself in the  
situation. This section embodies the principle that 4 person  
compelled by force or threat of force to do any act should  
not be punished for that act. However, two exceptions are  
a)so there. The Law Commission in its 42nd Report suggested  
thet such defence of duress can be usefully extended so as to  
include the threats to “near relatives” enumerating them as  
parents, spouse, son or daughter. The two exceptions and  
  
also the embargo are provided for in the he new section.  
  
A view has also been expressed that a person may  
not be close or near relative but may be one “n whom a person  
comelled js very much interested and that he concept of  
  
we find  
  
“person interested in” is not new to the I.P.c  
the same embodied in section 97 1.P.c. we are of of the view  
that such an inclusion of threats to any other person in whom  
the person committing the act is interested would be very  
wide and may not be an acceptable concept from the point of  
view of the principles of jurisprudence. In view of the  
recent threats of kidnapping of children for ransom,  
advancing threats to cause the death or grievous bodily  
injury to the victim have become a conmon feature  
  
Therefore, the inclusion of threats to near relatives Tike  
  
parents, son, daughter, etc. | would adequately serve the  
  
purpose.  
  
  
Page 270:  
=: 266 :~  
  
Tt may be noted that two exceptions in the existing  
section 97 are murder and offences against the state  
Further the threat must be of instant death to the person  
  
made to commit the offence  
  
To that extent he gets the  
benefit under this provision. Section 99 I.P.c. enumerates  
the restrictions to the exercise of right of private defence.  
Section 100 enumerates the circumstances under which the  
right of private defence of the body extends to causing the  
death. Exception 2 to section 300 {3 to the effect that  
culpable homicide is not murder if the offender in the  
exercise in good faith of the right of private defence,  
exceeds the power given to him and commits the death of the  
person without premeditation and without any intention of  
  
doing more harm than is necessary  
  
A question may arise as to what would be the nature  
of offences when a gerson under threat causes death as  
contemplated under section 94 or under the new section to be  
Substituted. Would it be culpable homicide not amounting to  
murder under certain circumstances 7 Causing death prima  
  
facie amounts to culpable homicide. The question is whether  
  
iE amounts to murder or not depends on the attengant  
circumstances. If they satisfy the requirements of section  
300, then it would be murder. This aspect would be a matter  
for consideration of the court while extending the benefit of  
Section 94. With these clarifications, we recommend  
  
Substitution of section 94.  
  
  
Page 271:  
A\_and 948 - Under this  
Clause two more new sections 944 and 948 are also. sought to  
be inserted. Section 944 seeks to cast prima facie absolute  
and strict Ifability upon a company and punish the company  
concerned whenever any employee commits an offence in the  
course of furthering the affairs of the company. It also  
  
hat any act constituting such offence must either  
  
specifies  
be authorised, requested, commanded, ratified or facilitated  
by any violation of a duty to maintain effective supervision  
  
by the management, the board of directors or any other person  
  
who is placed in a position of control over other employ:  
  
or in the evolution of company policy and affairs. section  
  
94A(2) discusses the class of offences in which the existence  
Of a culpable mental state is a condition and fixes absolute  
Viability upen the company for the offence committed by an  
employee whatever his position may be. Section 948 is  
Supplementary to section 944 under which the persons who were  
in charge of or were responsible to the company for the  
conduct of the business of the company, are also made  
constructively liable for the offence committed vy the  
employee and the whole concept underlying the two provisions  
is that the persons who are in charge or contro? of the  
company affairs and their employees should also be made  
constructively liable which denotes that they are expected to  
  
80 tho duty of Joyaliy and the duty of care In meng ing  
  
oxore  
the affairs of the company and if they in any manner  
  
authorise, request, command, ratify or facilitate an offence  
  
  
  
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of that nature by an employee by violation of the duty,  
should be equally responsible. We have gone through every  
jim of the two provisions carefully. In the several  
workshops, detailed discussions and deliberations were there  
about the desirability of incorporating these two new  
provisions in the Indian Penal Code which is substantive  
loss. It needs no mention that if any of the offences under  
1PC are committed then the provisions of the IPC may apply  
land the concept of constructive Tiability would be taken care  
of by the relevant provietons including abetment, attemot and  
conspiracy. That apart, the offences that could be envisaged  
  
being committed with reference to the affairs of the company  
  
would be altogether of a different nature and some of them  
could be statutory. There are several other spectal  
enactments which to a large extent cover many such offences  
which could be capable of being committed by the companies.  
Acts like MATP Act, Essential Commodities Act, FERA Act,  
Prevention of Adulteration Act, Fertilizers Act, are some  
such. With regard to the employment there are other labour  
jaws including Shops and Establishment Acts, Factories Act  
etc. That apart, in the new emergence of globalisation,  
liberalisation of trade and commerce, insertion of such  
provisions in IPC may prove to be counter-productive to the  
growth of business and any regulation that impedes the  
production and productivity and also creation of wealth  
should be discouraged as in the final analysis the overall  
growth of the nation’s wealth would be impaired. Therefore,  
  
we are of the view that sections 944 and 948 should be  
  
  
  
Page 273:  
delatad from clause 31. Tf necessary we may add some of such  
provisions in the other enactments including the Companies.  
  
Act, which may be strengthened to meet such a situation.  
  
12.24 Under these clauses some of the existing sections  
relating to right of private defence of persons and property  
are either sought to be amended or substituted. The law of  
private defence of person and property in India is codified  
in sections 96 to 106 based on the conceot that the right of  
self-preservation is @ basic one. The right of private  
defence must be distinct from the doctrine of necessity  
though the right of self-defence arises out of the necessity  
for self preservation. Still the latter is wider for there  
cannot be a right of self defence in all cases of naceasity  
The motive of self preservation is inherent in every man.  
  
The authors of the 1860 Code, Rattan Lal & Dhiraj Lal “Law of  
  
Crimes” (23rd Edition 1987) p.273, said  
  
We propose to excepting from the operation of the  
penal clauses of the Code large class of acts done  
in good faith for the purpose of repelling unlawful  
aggression. In this part of the chaoter we have  
attempted to define as such exactness as the  
subject appears to ua to admit the limite of the  
right of private defence. It may be thought that  
  
wo have allowed to accord a latitude to the  
  
  
Page 274:  
=: 270  
  
exercise of this right: and we are ourselves of the  
opinion that if wo have tn framing laws for a bold  
and high spirited people, accustomed to take the  
law in their own hand, and to go beyond a line of  
moderation in repelling injury, it would have been  
convenient to provide additional restrictions. In  
this country the danger is on the other side; the  
people are too little deposed to help themselves.  
The punishments with which they submit to the crue?  
depredations of gang murders, dacoities and  
mischiefs committed in the mest outrageous manner  
by all of us of ruffians, is ona of the most  
  
remarkable and at the same time most discouraging  
  
society in India presents to us. Io th  
circumstances we are desirous rather to rouse and  
to encourage a manly trade than to multiply  
restrictions on the exercise of a right to self  
  
defence. We are of opinion that al) the evil which  
  
is likely to arise from the abuse of that right is  
  
far less serious than the evil which would arise  
  
from the execution of one person for oversteoping  
what might appear to be the exact line of  
  
moderation in resisting a body of dacoits.”  
  
  
Page 275:  
Tf wa take the present scenario into consideration,  
we find that the situation in respect of such crimes noted by  
the authors has not in any way changed. Therefore, the law  
of private defence of persons and property based on the right  
  
of self-preservation is absolutely necessary.  
  
The existing sections 96 to 108 analyse and delimit.  
the right of private defence. These provisions have very  
often come up before the courts for interpretation and  
application. Section 96 states that nothing ia an offence  
wbich is done in exercise of this right. This right 1a  
analysed in the subsequent sections from two aspects, namely,  
defence of the body and defence of property. section 97  
defines these two aspects while sections 98 and 99 are  
applicable to both the aspects. Sections 100, 101, 102 and  
108 are concerned with defence of the body and sections 103,  
  
104 and 108 are concerned with the defence of property  
  
The Law Commission in its 42nd Report proposed a  
  
rangement of the provisions bringing together those  
  
relating to the right to defend the body in one section and  
those relating to the property in another for the purpose of  
an easier understanding and for facilitating their  
application. In the 8111 no change in respect of sections 97  
and 98 is mooted. Coming to section 99 the Law Commission  
after having considerad the various clauses in sanction 99  
recommended the insertion of a new provision in section 99 so  
  
as to make the immunity conferred by section 97 co-extensive  
  
  
Page 276:  
=: 272 ce  
  
with the deprivation of right of private defence ard such  
action in the first paragraph of section 98. The Law  
commission was also of the view that extea protection should  
pe given only when the public servant acts in pursuance of an  
order of a court of justice. Coming to the third oaragraoh  
of section 99, the Law Commission recommenced for delation of  
the third paragrash. It may be notes that the shied  
baragraph in the existing section 29 lays down a restriction  
namely, debarring the right of private defence in casos where  
  
there is time to hai  
  
recourse to the public authors  
  
Howaver, whether there was sufficient, time to have recsurse  
to the public authorities 1s a question of fact in each case  
  
If this restriction i removed aitogether, then ow  
  
respect of acts where there ‘8 no immediate ta  
  
garticularly those relating to property, people with smoun-ty  
may resort to exercise this right even though they had anole  
time to go to the public authorities for the ourocse of  
averting the danger to the property. Therefore, we are of  
  
the view that this restriction should be retained.  
  
Under clause 22 of the 811) the existing section 29  
  
18 sought to be susstituted and to altogether remove ~  
  
third clause. Therefore, we recommend that the thicd  
Baragraph in the existing sectson should be included in she  
  
Proposed section and rearrange the clause.  
  
  
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1278  
  
The existing section 100 justifies the killing of  
an assailant when apprehension of serious crimes enumerated  
in several clauses thereunder is caused and they should ve  
read subject to the provisions of section 99. The section  
Jays down that the right of private defence of body extends  
under the restrictions mentioned in section 99 to the  
voluntary causing of death or of any other harm to the  
  
assailant for an offence which occasions the exercise of the  
  
right by any of the descriptions enumerated in clauses 1 to  
  
6. In these clauses + to 6 serious offences like death,  
grievous hurt, comm+tting rape, unnatural lust, kidnapping or  
abducting, wrongful confinement are mentioned. The Law  
Commission, after examining the existing section 100 did not  
suggest any amendment in respect of ard, 4th and Sth clauses.  
However, minor change is suggested, namely, that in the sth  
clause the right to exercise in raspect of abducting shouts  
be limited where the abduction is punishable under the code,  
since abduction by itself is not punishable unless it is  
committed with one or the other of the intents specified in  
sections 364 to 369. Under clause 33 of the Bill some more  
changes have been added. The clauses are numbered as (a) to  
  
Assault with the intention of having carnal intercourse  
  
38 a7s0 added and with regard to abduction it should be one  
  
punishable under the Code. However, there is clause (e)  
which 16 to the same effect - as clause “sixthly" in the  
existing section. Therefore, the proposed change is  
  
appropriate  
  
  
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und the existing section 101 the words  
  
“voluntarily causing to the assailant of any harm other than  
death” are sought to be substituted in clause 94 of the 8111  
by the words “voluntary causing of any harm other than death  
or the snvoluntary causing of the death to the assailant™.  
The Law Commission suggested such a change because there may  
be cases of involuntary causing of death, for example, death  
by rash and negligent act. This change appears to ve  
  
appropriate.  
  
Section 103 indicates as to when a person can act  
in defence of property and enunerates the offences in clauses  
1 to 4 in respect of which the right extends. The right  
under this section extends not only when the offences thus  
enumerated are committed but also when an attempt to commit  
is made. The Law Commission in its 42nd Report noted that  
clause “secondly” mentions housebreaking by night, but not  
lurking house trespass by night, which is as severely  
punishable as housebreaking by night, and that it is often  
difficult to decide whether the offender has committed  
lurking housetrespass or housebreaking. The Law Commission  
also observed that since certain amendments in chapter XVII  
relating to offences against property where housebreaking by  
night would cease to be a separate offence recommended to  
  
omit clause “secondly” also on the ground that the existing  
  
clause 4 governs aggravated forms of crimina) trespass  
  
Existing section 441 defines criminal trespass, 442 house  
  
trespass, 443 lurking house trespass, 444 Turking house  
  
  
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trespass by night, 445 house breaking, 446 housebreaking by  
night. These sections were there incorporated in the  
  
existing Code, taking into consideration the circumstanc  
  
Prevailing in India, The Law Commis:  
  
on in ite 42nd Report.  
  
while dealing with offences under chante:  
  
XVIT that is  
relating to property recommended deletion of these provisions  
and introduced a new section 445 under the head “surglary  
  
We have considered these changes while examining clause 142  
  
of the Bi11 and are of the view that the changes proposed are  
  
lutary, Consequentty, the changes proposed by the Law  
  
Commission in respect of clau:  
  
"secondly" of section 103  
Need to be incorporated. The Law Commission also recommended  
that clause 3 relating to offence - mischief by fire should  
be amplified including mischief by explosive substances,  
mischief by fire or explosive substances committed on any  
  
vehicle should be added.  
  
In the proposed section 103 of the Bill, there +s a  
new clause (c) relating to the offences of mischief to  
property, house, or intended to be used for the purpose of  
  
Government or any corporation,  
  
Two more new clauses (e) and (f) are sought to be  
  
added in the proposed section. lau:  
  
8) includes hijacking  
of aircraft and clause (f) tncludes sabotage. while  
discussing the offence of hijacking under new section 362A,  
we have indicated that the same need not be incorporated  
  
because of the reasons stated in Chapter x. Therefore, here  
  
  
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also clause (e@) has to be omitted, Wo may also add that  
clause (8) was added in conformity with the new section 3624  
applying to the offence of hijacking of an atrcraft. If that  
section is to be deleted, clause (e) need not be there. It  
may be mentioned that in every offence of hijacking, there  
would be an offence being committed against property or  
person. To that extent the relevant provisions of right of  
private defence would be applicable. Under (f), the offence  
of sabotage is mentioned. In our discussion under clause 180  
we have suggested that the new provisions with reference to  
the offence of sabotage can be retained. Therefore, clause  
  
(f) can be retained but may be renumbered as (e).  
  
Under clause 36 a minor amengment to section 104 is  
  
Proposed. The words “voluntary causing to the wrong-doer of  
any harm other than death” are sought to be substituted on  
the samo lines as in clause 34 with reference to section 101  
  
These changes can be carried out.  
  
Slause 37  
  
12.25 Under this clause the existing section 105 is  
Sought to be substituted by a new section bearing the sane  
number. The existing section 105 deals with commencement and  
continuance of private defence of property The Law  
Commission did not propose any change to the section.  
However, it recommended to omit Sth para which deals with  
  
house breaking by night. The new section deals with houne  
  
  
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trespass which has by  
  
n considered by us under clause 182 and  
because of the consequent changes approved thereunder the  
clause § has to be accordingly omitted. In the new section,  
however, we find clause (c) which also mention hijacking of  
aircraft. While considering changes in clause 35 with  
  
refe  
  
nce to section 103, we observed that clause (e) dealing  
with “hijacking of aircraft” should be omitted. For the same  
reason, the words “hijacking of aircraft” in clause (c) in  
  
the proposed new section 105 have to be omitted.  
  
Clauses 38 to 44  
12.26 Under the Indian Penal code ‘abetment' is a  
  
separate and distinct offence provides a thing abetted is an  
offence. As a general rule, a charge of abetment faits if  
  
the substantive offence is not established ag:  
  
inst the  
Principle assailant. The Supreme court in Jamuna Singh's  
case, (AIR 1967 SC 563) has held that it cannot be held in  
Jaw that @ person cannot ever be convicted of abetting a  
certain offence when the person alleged to have committed  
that offence in consequence of abetment, has been acquitted  
and that the question of abettor’s guilt depends upon the  
  
nature of abetment: and the manner that the abetment was mace.  
  
Sections 107 to 120 in chapter V relate to the  
abetment, Section 107 classifies abetment under three heads,  
t.e., by instigating or by conspiracy or by intentional aids  
These are explained in both Sections 107 and 108. The Law  
  
Commission in its 42nd Report examined Section 120-A which  
  
  
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Jays down that when two persons agree to commit an offence or  
to cause an offence to be committed, they are guilty of  
criminal conspiracy to commit that offence whether or not any  
of the parties thereto does any act besides the agreement in  
pursuance thereof and noted that the persons who are  
initially guilty of conspiracy to commit an offence become  
guilty of abetting the offence as soon as an act or illegal  
omission takes place in pursuance of the conspiracy and that  
after an enactment in 1913 of Sections 120A and 1208 making  
conspiracy itself punishable in the same manner as abetment.  
Abetment of an offence by conspiracy has lost its relevance  
and, therefore, all references in Chapter ¥ including Section  
107 ‘abetment by conspiracy’ should be omitted. The Law  
Commission also examined Sections 108 and 108A ang after  
referring to some of the decided cases recommended that  
Explanations 2 and 3 may be combined and revised and that  
Explanation 4 may be reworded and that Explanation 5 which  
mentions about the abetment by conspiracy to be omitted. on  
these lines, the Law Conmission recommended that Section 108  
  
and 108A may be combined and revised. Clause 38 of the  
  
(Amendment) 811) 1978 has incorporated these recommendations  
but with some changes. By and large, Section 108 as  
mentioned in clause 38 is in conformity with the  
recommendations made by the Law Commission. Therefore, we do  
  
hot recommend any further change  
  
  
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<1 279 =  
  
Sections 115 and 116 deal with the punishments for  
  
successful abetment of offenc  
  
Section 115 specificatty  
deals with the punishment for unsuccessful abetment of  
offence punishable ‘with death or imprisonment for life’  
  
The Law Commission in its 42nd Report noted that the words  
‘death or imprisonment for life’ are ambiguous and they may  
cover sedition, Therefore, they recommended to limit it to  
capital offences for which death is the only punishment or  
one of the punishments provided by law and accordingly  
recommended revision of this Section. Existing Section 116  
prescribes punishments of offences punishable with  
imprisonment when the offence is not committed. The Law  
Commission recommended that in order to avoid any avertaoping  
between Section 118 and 118, it is desirable to exclude  
capital offences by inserting the words in Section 116 ‘not  
being a capital offence’. The Law Commission also noted that  
tha maximum punishment for abetment if that offence be not  
committed is only 1/4th of the longest term and this was too  
low and should be increased to 1/2 of the maximum teem  
provided for the offence. The Law Commission also examined  
second paragraph of Section 116 and recommended that where  
the abettor is a private person who abetted a public servant  
should not be dealt with more severely than tn a case where  
the person abetted is a private individual. Section 117  
applies to abetment of the commission of an offence by the  
  
public generally or a number of class of parsons exceeding  
  
ten. The Law Commission having noted judgments of some High  
  
Courts recommended a new Section 117A to be inserted which is  
  
  
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to the effect (that whoever commits the commission of an  
offence punishable with imprisonment by a child under 1  
years of age whether or not the offence is committed shall be  
punished with imprisonment of any description provided for  
that offence which may be extend twice the longest term of  
imorisonment provided for that offence. Likewise, the Law  
commission also examined Sections 118 and 119 and suggested  
  
some minor changes like the words ‘a capita} offence’ be  
  
be  
  
substituted. 4 perusal of the new provision sought ©  
  
included would show that they are in conformity with the  
  
recommend.  
  
tions of the Law Comission and we are aiso of the  
  
view that the changes are warranted  
  
The changes suggested in clause 39 of the B11 are  
  
of minor nature  
  
Jause 45  
  
12.27 Under this clause a new Chapter VB is sought to be  
inserted under which new section 120¢, 120D defining attempt  
and punishment for offence of attempt. The existing section  
$11 is sought to be omitted. We have carefully examined this  
clause and the scope of these new two sections in Chapter  
No.VI and recommend that section S11 be retained and this  
  
clause be deleted  
  
  
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<2 281 =  
  
Clause 47  
  
12.28 Under this clause « new section 123A t@ sought to  
  
be inserted. The new section lays down that whoever assists  
  
in any manner an enemy at war with India, or the armed fore  
of any country against whom the armed forces of India are  
engaged in hostilities, whether or not a state of war exists  
between that country and India, shall be punishable. The Law  
commission in its 42nd Report recommended insertion of a new  
section but in the B11] we find that an Explanation is also  
added to. the section which is explanatory in nature. we are  
  
also of the view that the new section may be inserted  
  
Clause 48  
12.29 Under this clause, the existing section 1244 which  
deals with Sedition is sought to be substituted by a new  
  
section bearing the same number, Most of the clauses  
  
mentioned in the existing section 1244 find a place in the  
new section. In addition, certain acts are included. The  
new section postulates that whoever by words, either spoken  
  
or written, or by signs, or by visible representations, or  
  
otherwise, excites, or attempts to disaffection  
  
towards the Constitution, or the Government or Parliament of  
India, or the Government or Legislature of any State or the  
Administration of justice, intending or knowing it to be  
Vikely thereby to endanger the integrity or security of India  
  
1 be  
  
or of any State or to cause public disorder shi  
Dunishable. The expression “disaffection” is the same except  
  
the word “disloyalty” is omitted. This change is in  
  
  
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conformity with the addition of offence of disaffection  
  
towards Parliament, Legislatures, administration of justice  
  
which was not there in the existing section. Having  
  
considered both these provisions, we are of the view that the  
  
changes as found in the Bi11 can be carried out. we have  
  
discussed all these aspects in Chapter No.VII in detail and  
we have also given reasons why the changes should be carried  
  
out.  
  
Under this clause a new section 1243 is also sought  
to be inserted. Under this new section, whoever deliberately  
insults the Constitution of India or any part thereof, the  
national flag, the national emblem or the national anthem, by  
burning the national flag etc., shall be punishable. The Law  
Commission in its 42nd Report observed that there should be a  
Provision for punishment for insults to the Constitution,  
national flag, emblem and the national anthem which may  
include burning of the Constitution and deliberate insults to  
the national anthem which are unpatriotic, Therefore, they  
  
commended the insertion of this new section. On the basis  
  
of that recommendations, Prevention of Insults to National  
Honour Act, 1971 has been enacted. Therefore, this new  
Section 1248 need not be inserted and the same may be deleted  
  
from clause 48. (Vide Chapter VII)  
  
12,30 Under this clause the existing chapter vir is  
  
t  
[ares  
J soso to be substituted by a new Chapter bearing the name  
  
  
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203  
  
number. This chapter deale with offence which might be  
  
committed by the civilians in relation to the defence  
  
services personnel. In the @111 a new section 130A is there  
which only deals with definitions occurring in the sections  
131 onwards. The new section 131 deals with abetment of  
mutiny. Section 132 deals with attempts, 133, 134 & 195 with  
abetment, 136 & 137 with Deserter, 138 with abetment and 128A  
with incitement etc. The Law Commission in its 42nd Report  
recommended these changes. It is observed that civilian  
population are not dealt with severely as service personne!  
involved. Therefore, the Law Commission suggested that there  
should be co-relation between such offences punishable under  
the Pena Code and the offences punishable by court martial.  
Likewise the Law Commission also referred the Air Force Act  
  
also, The new section 139 clearly lays down that persons  
  
subject to certain laws like Army Act, Navy Act, Air Force  
Act not to be punishable under this chapter. Taking the  
implications recognised by the Law Commission, there is no  
harm in having this Chapter inserted in place of existing  
  
chapter.  
  
Clause 54  
  
12.31 Having regard to the large scale riotings of  
various crimes that are taking place, the Law Commission in  
ite 42nd Report observed that it is desirable that rioting  
should be checked at the earliest stage and also mentioned  
collecting sticks, knives, other weapons by anti social  
  
lomonts who are bent upon committing mischief and with a  
  
  
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view to check such preparation, the Law Commission  
recommended insertion of anew section 197A. Accordingly a  
  
new section 147A is sought to be added vid claus 54 of the  
  
Bill. We agree with that proposed insertion:  
  
Clause 58  
  
12.32 Under this clause a new section 153C 1s sought to  
be added. Sections 183A and 1538 were added in the year 1972  
in chapter VIII which deals with offences against public  
tranquillity. Under section 153A whoever by words, either  
spoken or written, promotes disharmony, ill-will, etc., or  
commits any act, organise any movement etc. with a view to  
promote enmity between different groups on grounds of  
religion etc., is punishable, Under section 1538 whoever, by  
words either spoken or written, etc. makes or publishes any  
imputation, asserts, propagates, makes or publish any  
assertion or an appeal concerning the obligation of any  
person belonging to any religion, language, caste or  
  
community, +s aiso punishable. In its 42nd Report, the Law  
  
Commission having traced the legislative history of these  
sections referred to the judgment of the Supreme Court in  
  
Kedarnath’s case (AIR 1962 SC 985) wherein the validity of  
Section 1244 was upheld. On a parity of reasoning the Law  
  
Commission noted that the validity of section 153A could also  
be supported. Thereafter, the Law Commission proceeded to  
consider the scope of section 153A and observed that  
explanation to section 153A protects honest criticism or any  
  
act of the person criticising a political party without a  
  
  
Page 289:  
285 :-  
  
malicious intention. The Law Commission, however, did not  
recommend insertion of section 183. It may be noted at this  
stage that the existing section 505 deals with offence of  
making statements conducive to public mischief and lays down  
  
- makes, publishes or circulates, etc., with  
  
that who!  
jntent to cause fear to the personne! of the defence services”  
or with a view to cause fear to public etc. would be  
punishable. The Law Commission in its 42nd Report  
recommended deletion of this section. However, there was a  
recommendation to bring changes in sections 153A and 1538,  
but section 152¢, however, is being added under clause 58 of  
the gi11 and the same carries the essence of section 505  
except omitting the soldiers, Navy, etc. Obviously, because,  
these offences against defence personnel have been taken care  
  
of in the respective Acts applicable to those services. We  
  
have already discussed thie in this Chapter dealing with  
offences against armed forces, etc. We agree that section  
  
153¢ may accordingly be added.  
aus 4  
  
had and already been repealed by the Prevention of Corruption  
  
er therefore, omitted  
  
  
Page 290:  
Clause 66  
  
12.34 Under this clause a new section 186A ia sought to  
be inserted which deals with offences by or relating to  
public servants. It may be mentioned that sections 161 to  
165A which deal with offences of misconduct have been deleted  
in the IPC and made offences under the Prevention of  
Corruption Act, 1988. The remaining sections 186 to 171 deal  
with other Kinds of offences committed by a public servant.  
The existing section 186 deals with offences of d\*sobeying  
law by public servants with intent to cause injury. The Law  
Commission in its Forty Secone Report observed that the coce  
does take into account this Kind of misconduct by 3 public  
servant where the misconduct takes the shape of bribery. It  
is further observed that it is desirable to ensure that 10  
public servant shal! in the exercise of the duties of his  
‘of¥ice while acting under colour of his office, do any act  
which is wrongful in itself, or do an otherwise jawful act -n  
wrongful manner. From this point of view the Law Commission  
recommended that there will be a penalty to punish misconduct  
and also recommended insertion of new section 100A. — The  
content of new section 166A proposed is different from the  
content of section 166 as we finds earlier. The words as to  
“maliciously to cause injury to any person” are added,  
otherwise the spirit behind the section is more or less same  
  
Therefore, 186A may be inserted  
  
  
Page 291:  
<: 287 i  
  
Glause 68  
  
12.38 Under this Clause a new  
  
tion 167A is sought to  
be inserted in Chapter IX which deals with offences by or  
relating to public servants. The Law Commission in its 4zng  
Report noted that even in their earlier Revert namely 29th  
  
Report it was recommended that to tackle the problem of  
  
cheating of Government on large scale by dishonest  
contractors while supplying goods or executing works,  
unauthorised payment in respect of such contracts should be  
made punishable under specific provisions. Having noted so  
the Law Commission in its 42nd Report recommended insertion  
of mew section 167A. A perusal of the provision would show  
that it is a salutary one particularly in the present  
Scenario where large scale execution of public works is  
  
taking place. Therefore we agri  
  
that 187A may be inserted  
  
Clause 91  
  
12.96 Under this clause new sections 1984 and 1988 are  
Sought to be added in Chapter XI which deals with the  
offences of giving false evidence and offences against public  
justice. The unscrupulous persons do not nesitate to use  
false medical certificate to gain advantage in the course of  
the litigation and sometimes for purposes unconnected with  
the Courts. The Law Commission recommend that issuing false  
Medical cortiffcates and using the same should be made  
  
specifically punishable under the new provisions. we find  
  
  
Page 292:  
= 268  
  
from the Report that in so recommending the Commission noted  
that people are accepting generally the medical certificates  
because they are issued by doctors and therefore it would be  
better to have a specific provision. In the workshops and in  
the National Seminar in particular it was deliberated in  
detail whether such a provision dealing with medical  
certificate issued by any practitioner should be made a  
separate offence. The consensus particularly from those  
Practitioners who participated was to the effect that  
Provisions are unnecessary and if in a given case a false  
certificate is deliberately given with intention that it  
should be used tn the Judicial proceedings and if any person  
uses such certificate then he would be punishable under  
section 187 of the Isc. That apart, section 196 is in  
  
general terms and may cover any such usage or attempt 2  
  
such document as evidence. Having given our earnest  
  
consideration and also having regard to the fact that the  
medical practitioners are also brought within the provision  
of Consumer Protection Act which is a Tater Act, we think  
that addition of new sections 198 and 1988 is unnecessary.  
  
Consequently clause 91 has to be omitted.  
  
Chater XI of the Code deals with offences of false  
Svidence and offences against public justice. The existing  
Sections 206 and 207 punish certain fraudulent acts designed  
  
£ prevent the seizure of property under the order of court,  
  
  
Page 293:  
7: 29 s+  
  
Section 206 deals with fraudulent removal or concealment of  
Property to prevent its seizure as forfeited or in execution.  
  
Likewise saction 207 deals with an offence of a fraudulent  
  
claim to property to prevent its seizure as forfeited or in  
execution. Tt can be seen that while section 206 deals with  
removal or concealment or such property, section 207 deals  
with a fraudulent claim to such property. There is no  
specific provision to deal with other types of removal or  
  
interference of such propert: Once property is lawfully  
  
attached by an order of a court, it is obligatory that no  
removal of any kind or interference whether fraudulent or  
  
otherwise should be there. The Law Commission in its 42nd  
  
Report having considered this aspect, pointed out that once  
  
any movable property has been lawfully attached by a court  
order, any unauthorised removal or any interference with that  
eroperty should be punishable irrespective of the motive or  
the intention of the person concerned. Accordingly, the Law  
Commission recommended insertion of a newMction 208A under  
this clause. This provision appears to be necessary as the  
concept is that the court’s order should prevail under any  
  
circumstances to promote ends of justice  
  
Clause 24  
  
12,38 The existing section 182 deals with the offence of  
Siving false information with an intent to cause public  
Servant to use his lawful power to the injury of another  
  
Person. Section 211 deals with the offence of making false  
  
  
Page 294:  
charge of offence of making false charge of offence made with  
  
intent to injure and it ie in two parts. The second part  
  
deals with such a false charge of an offence punishable with  
death, imprisonment for life, etc. and makes it to be a  
graver offence punishable with higher sentence. Ta some  
  
extent the contents of these two provisions overlap. The Law  
commission in its 42nd Report rightly noted that the  
practical importance of this overlapping or conflict lies in  
the procedural rule with reference to section 195 of the  
Criminal Procedure Code. The taw Commission also noted that  
the wording of section 211“is not as clear and unambiguous as  
could be desired” Consequently the Law Commission  
  
recommended rawording of that section and the new secticn is  
  
to substitute the existing section. The change procosed is  
  
fan appropriate one  
  
12.39 In Chapter XI the existing section 229 deals with  
  
section 229, namely, sections 2298 and 2298. As oer that  
  
interference with witnesses and section 2298 is to deal with  
  
ithe offence of failure by a person who is on bail or on bond  
  
  
Page 295:  
ar 281  
  
to appear in court. Under clause 100, however, they are  
numbered as sections 229 and 229A. In the present scenario  
ef criminal trials, the enormous delay is due to various  
reasons, particularly the non-attendance of the witnesses due  
to some reason or the other and in many cases mainly because  
of threats and corrupt means etc. and likewise absence of  
  
persons who are on bail. — Th  
  
fore, these two proposed  
sections under this clause which are in conformity with the  
  
recommendations of the Law Commission are much needed.  
  
Clause 110  
  
12.40 The existing sections 254 and 263A deal with  
offences of delivery of coins as genuine and using fictitious  
stamps that occur in chapter XII dealing with the offences  
relatinggto coins and government stamps. New types of  
criminal acts are coming to light, namely, dishonest use of  
slugs in vending machines, misuse by inserting something else  
in the place of a coin. Though this recommendation was made  
by the Law Commission in 1971, as at present we noticed that  
such machines are being largely used even by public  
authorities or private concerns and in places where such  
services are being rendered. The insertion of new section  
254A under this clause is a salutary on that will ctmbat such  
  
malady.  
  
  
Page 296:  
=: 292  
  
Clause 111  
  
12.41 Under thi clause new sections 263A, 2638 and 2630  
  
are sought to be substituted. These sections also deal with  
  
offences relating to fictitious postage stamps and also  
  
preparation to commit such offence: The existing section  
263A lays down that whoever makes, knowingly utters, deals or  
sells any fictitious stamps or has in possession are sought  
to be punished. In its place the new sections are sought to  
be substituted. In the new proposed sections we find more  
coverage of such offences and having regard to the large  
scale use of stamps at present by the public and to orevent  
  
misuse, it would be better to have these provisions  
  
Clause 112  
  
12.42 In Chapter XIII sections 264-267 deal with offences  
of using false instruments for weighing and measuring and  
being in possession of false weights or measures or making or  
selling the same. In 42nd Report the Law Commission having  
regard to such offences committed on large scale recommended  
that the sentence should be two years instead of one year and  
on the basis of that recommendation in clause 112 the  
Substitution of words “two years” for “one year” in those  
  
Sections is sought to be contemplated.  
  
  
Page 297:  
- 1 293  
  
In this context, in several workshops it was  
highlighted whether the retention of those sections in  
Chapter XIII would be necessary in view of the Standards of  
Weights and Measures Act, 1978. A perusal of the penal  
provisions of sections 50-70 and an examination of the scone  
and object of the Act would reveal that the main purpose in  
  
enacting this Act is to see that the standards of measur  
  
and weights are established and the same to be us)  
  
din trade  
and commerce. This aspect is also clear from an examination  
of the definition of “false weight or measure” which means  
any weight or measure which does not conform to the standard  
established by or under this Act of 1976. Therefore, any  
  
such vi  
  
tion, namely, using non-standard weights and  
  
measures per se amounts to an offence. The word  
“frauaulently" which is used in each of the sections 264, 265  
and 266 IPC and the words “which he knows” occurring in  
sections 266 and 267 IPC are not found in the various  
offences enumerated in Part 6 of the Standards of Weights and  
Measures Act. | That means for an offence punishable under  
those sections, the question of mens rea or an element of  
fraud is not relevant. Whereas in respect of those offences  
in Chapter XIIt of IPC such a state of mind is an important  
factor, It can also be noticed that the sentence in respect  
of offences punishable under the Standards of Weights and  
Measures Act is much more lenfent and a complaint can be  
Filed only by a Director or an authorised officer mentioned  
  
therein and a private citizen who is a victim cannot  
  
  
Page 298:  
prosecute in a court. Therefore, it is appropriate that the  
said sections in IPC should be retained as they are and  
  
increase the sentence as proposed under clause 112.  
  
Clause 119  
  
12.43 Under this clause a new section 279A is sought to  
be inserted. The existing section 279 deals with one type of  
offences relating to rash driving or riding on a public way.  
under the new section the offence of driving unsafe or  
overloaded vehicle on a public way is sought to be punished.  
Having regard to the increase in the volume of road traffic  
and indiscriminate use of vehicles whether they are  
  
roadworthy or not, such a provision is very much needed.  
  
Clause 122  
  
12,44 The existing section 292 in chapter xiv ling  
  
with offences affecting the public health, safety,  
convenience, decency and morals, punishes the obscene books  
ete, This section has been also amended in the year 1968.  
As to the nature of the test of obscenity, the assessment of  
  
the same depends upon so many factors and there have bi  
  
Judgements rendered on jt. There have always been a  
Practical problem in deciding what is “lascivious” ang what  
aopeals to the “prurient” interest, and what does or does not  
tend to desrave or cerrupt. The Law Commission in its 42n¢  
  
Report observed that “more ‘important than this attempted  
  
  
Page 299:  
295 :-  
  
definition is the new exception, which allows a defence on  
the ground that the publication is in the interest of art or  
  
science or literature or 1  
  
ening. This will actually turn  
on “expert evidence”, which would be permissible under  
section 45 of the Evidence Act. The Law Commission however  
recommended that it would be safer if in the section itself a  
provision is specifically made for admission of such expert  
evidence. We are also of the view that such expert evidence  
in respect of the facts and circumstances in a case on the  
question whether they are of lascivious nature etc. should  
  
be covered by the section on the lines recommended by the Law  
  
Commission in the new sub-section sought to be inserted in  
section 292 under clause 122 of the Bil] which would be an  
  
aporoariate addition.  
  
Clause 122  
  
12.45 After section 292 a new section 2824 is sought to  
be inserted. Under this clause the new section deals with an  
offence of printing ete. of grossly indecent or  
surreptitious matter or matter intended for blackmailing. &  
perusal of this new section shows that the object of  
inserting the same is to prevent the irresponsible way of  
printing newspapers, periodicals or other exhibits meant for  
public view in such matter when the same is intended for  
blackmailing. This will be a good check on such printings  
  
etc. which a  
  
grossly indecent. This section also orovides  
  
for a minimum punishment if the same offence is committed  
  
  
Page 300:  
again on the same Vin  
  
as we find in section 292. There are  
also explanations to this new section dealing with good faith  
etc. Explanation 2 gives certain guidelines to the court and  
  
Provides certain considerations regarding general character  
  
of the person incharge etc. to be taken into consideration  
by the court. However, we are of the view that the sentence  
may be made three years so that it may be on par with the new  
section 292A to be inserted. Further, in conformity with our  
  
commendations on sentencing policy vide Chapter II, the  
  
punishment under this proposed new section 292A should also  
  
be imprisonment and fini  
  
Clause 124  
12.48 The existing section 294A deals with offence of  
keeping lottery office. This section is sought to be  
  
substituted by a new sections 294A and 2948 under this  
clause. The existing section lays down that whoever keeps  
any office or place for the purpose of drawing any lottery  
Not being a State lottery shall be punished with imprisonment  
and also deals with publication of any proposal to pay any  
  
Sum, The new section is more elaborate and enumerates the  
  
various steps and prescribes the necessary punishment. In  
  
View of the modern trends in proliferation of the lotteri  
  
this new section is a salutary one and it is on the lines  
Fecommended by the Law Commiesion in its 42nd Reoort.  
Likewise, section 2948 though a new section only prescribe  
  
the necessary punishment in respect of the offences of sale  
  
  
Page 301:  
297  
  
distribution of lottery tickets. Section 2948 deals with the  
sale, distribution of lottery tickets of a state lottery  
without authorisation by the respective Governments and makes  
such sale punishable, The object. underlying is obvious,  
namely, to prevent illegal dealing with the state lottery  
tickets. In conformity with cur recommendations on  
sentencing policy vide Chapter IZ, the punishment under these  
proposed new sections 2944 and 2968 should also be  
  
imprisonment and fine.  
  
Clause 128  
  
12.47 In this clause Section 302 is sought to be  
substituted by the new section bearing the same number  
Under Section 292 a person who commits murder shall be  
Sentenced to: LERRSY gleath. The question in what tyos of  
cases the dea MGSRZF ¢ 16 be gwarded has been consigered  
in a number BPrgBses by the Supreme Court and a concent of  
“rarest of rare cases” have been evolved. But in the  
proposed section it is sought to be enumerated as to in what  
  
type of cal death  
  
ntence can be awarded. We have  
  
considerad this aspect in Chapter 11: and arrived at a  
conclusion that al) categories of such cases can not be in  
the said Chapter. Consequently, Section 302 should be left  
  
as it ie and clause 125 may stand deleted.  
  
  
Page 302:  
=: 298:  
  
Clause 128  
  
12.48 Under this clause a new section 3048 is sought to  
be inserted. At the outset we must point out that in 1986 by  
amending Act 43 of 1986, the existing section 2048 dealing  
  
with dowry death was inserted. Th  
  
fore, the new section  
  
namely 3048 under this claus  
  
a phenomenon, namely, “hit and run” to escape from the  
  
Viability. Therefore, this provision can be inserted as  
  
@ number cannct be 3048, We recommend  
  
mentioned above, but  
  
that this may be inserted in 304A as subsection (2)  
  
12.49 Under this clause sections 307 and 308 are sought  
to be substituted. In general, both the sections are  
analogous in many respects to the existing sections.  
Tllustrations to section 307 are, however, sought to be  
deleted under the proposed section. The Law Commission in  
its 42nd Report proposed a new Chapter 58 defining attemot  
and also prescribing punishment by inserting sections 120¢  
and 1200. Consequently, the Law Commission also have  
Tecommended substitution of the new sections 307, 308 while  
  
eating with Chapter VB and the proposed sections 1200 and  
  
  
Page 303:  
= 299:  
  
1200. We make it clear that it is not necessary to Have  
these new sections 120C and 1200 and also recommended to  
retain sections 307, 308 and S11 as they are except to delete  
the second part of existing section 307 which prescribes  
death as the punishment for any attempt made by a Tife  
  
convict. This has to be deleted for the same r  
  
ons for  
  
deleting section 303. (Vide Chapter vr)  
  
Clause 131  
  
12.50 Under this clause the existing section 309 which  
makes attempt to commit suicide ounishable is sought to be  
omitted. But in view of the recent judgement by the Supreme  
court In r vs f punjab, ( 1996  
scc(cr)374) vires of the section has been ushela  
consequently, the existing. section 309 has to be retained anc  
  
clause 191 has to’ wWMMMibitted from the BiT1.( Vide Chapter  
  
vit)  
  
Clause 134  
  
12.54 Under this clause the existing section 320 defining  
grievous hurt is sought to be substituted. The Law  
  
Commission in its 42nd Report observed that the word  
  
priva used in the existing section is archaic and  
  
“emasculation” in that clause may be omitted as the same is  
  
@ widened Sth clause, The proposed changes are  
only peripheral, but a little more explanarative. Therefore,  
  
that can be carried out.  
  
  
Page 304:  
Clause 127  
  
12.52 Under this clause the existing  
  
sought to be substituted by the new section. In content  
though both the sections are same except in the new section  
in place of “unwholesome drug or other thing” the word  
"unwholesome substance” are inserted which are of same effect  
  
but little wider.  
  
Clause 144  
12.53 Under this clause the existing sections 341 and 344  
are sought to be substituted. The Law Commission in its 42nd  
Report recommended that under section 341 the sentence of  
imprisonment is unnecessary out fine may be upto 5  
1,000/and where, however, the offence is jointly committed by  
  
ten or more persons, it should be more seve:  
  
ly punishable  
  
with imprisonment of either description upto one  
  
fine or both, Accordingly, the Commission recommended  
  
vision of section 341 and alec section 342. While dealing  
with section 343 and 344 the Law Commission recommended that  
both of them could be incorsorated in one section end  
Proposed new section 349 dealing with wrongful confinement  
for five days or more. In the Bi11, however, we fing on the  
same Vines, the new sections are being incorporated. The  
Question is whether the offence is aggravated if there are  
ten persons and whether there should be such a limit. we are  
  
of the view that the number of persons on the basis of  
  
  
Page 305:  
=: gor  
  
constructive liability can be limited to two or more persons  
as we find in the proposed amendment in section a4, 35 and 38  
  
rpc.  
  
Clause 146  
  
12,54 Under this clause a new section 384A dealing with  
offence of indecent assault on a minor is sought to be  
inserted. This aspect was considered in chapter Ix and  
accordingly for the reasons stated therein, this clause has  
  
to be omitted.  
  
Clause 142  
12.55 Under this clause, the existing section 362  
Sought to be substituted by the new section. This existing  
  
section 3262 deals with offence of definition of abduction.  
Under the new section it is elaborated. This new section  
362A dealing with hijacking of aircraft or any other vehicle  
is sought to be added. We have discussed about this new  
  
section in Chapter x. For the reasons men  
  
ned therein the  
Rew section 362A need not be inserted. However, so for as  
  
the new section 362 is concerned, it has enlarged the m  
  
Of abduction and it can be inserted.  
  
  
  
Page 306:  
=: 302  
  
Clause 151  
  
12.56 Under this clause, after section 364, a new section  
384A dealing with offences of kidnapping is sought to be  
inserted. Having regard to the present crime scenario of  
this nature, the new section is a salutary one and has been  
  
rightly carried out by Act No.d2 of 1993  
  
12,87 Under this claus:  
  
the existing section 368 anc  
  
366A are sought to be substitutes by the new se:  
  
second half of the section 366 and 366 are cise!  
  
with each other The Law Commission aiso  
  
recommenced that they coule scoropri  
  
secyion. Accordingly, the second half of  
  
incorporated 3664 1@ change is only conseauent\*a! anc ve  
  
encorse the same.  
  
© ts  
  
12.58 Under this clause the existing sectien  
  
Sought to be substituted. The Law Commission ia it  
Report observed that the extsting section 262 which deats  
with wrongfully concealing a person knowing te se «ianances  
or abducted, leaves the punishment to be requiated accorsivs  
  
te the ounishment for the principal offence of kidnano!  
  
abduction. It would be better if specific punishment <2  
  
  
Page 307:  
303 :~  
  
provided in the section. The new section is on the same  
lines suggested by the Law Commisston, Therefore, the  
  
substitution accordingly be made  
  
Clause 159  
  
12.59 Under this clause, the existing sections 378 and  
376 are sought to be substituted by new sections 375, 378A to  
  
376c. For the r  
  
ons stated in Chapter Ix this clause may  
be omitted. We, however, recommend a modification in clause  
3 of section 375 by inserting the word “injury”. The change  
  
may be brought about.  
  
Clause 160  
12.80 Under this clause the existing section 377 +s  
sought to be substituted by the new section. This existing  
  
section makes as unnatural offence punishable and the  
sentence prescribed is imorigcnment for life or imprisonment  
of either description for a term which may extend to ten  
years and also shall be liable to be fined. The Law  
commission in its 42nd Report examined the question whecher  
  
the sentence of imprisonment for life or for the ten year:  
  
a serve one, A questionnaire was issued and one of the  
questions was whether unnatural offences should be pun‘shapie  
  
at all and the replies received appears to be conflicting.  
  
  
Page 308:  
304 :-  
  
However, having regard to the social values in our country,  
the Law Commission recommended some changes particularly in  
  
ect of punishment. The Law Commission rightly observec  
  
that the sentence of imprisonment for life or ten years in  
  
every ci  
  
Ys unrealistic and very harsh. They, however  
recommended that such assault on a minor by an adult should  
be punishable sever. On those lines, the new section 377 is  
formilated. So the same may be substituted, on the lines  
  
suggested in Chapter ix,  
  
Clause 161  
  
12.81 Under this clause, the existing Sections 380 and  
381 which deal with offences of theft are sought zo be  
  
substituted by Sections bearing the © numbers. his.  
  
existing Section 280 deals with theft in any buileie,  
Gwelling house, tent or vesse] etc. and lays down that such  
an offence shal! be punishable with imprisonment of eicher  
description, which may extend to sever years and shall aiso  
be Tiable to fine. In the new Section, more number of places  
where such theft is committed are acded. For instance  
  
aircraft ete and Sub-section (2) specifically  
  
cludes theft  
  
of “antiqui  
  
or art treasure” and theft in respect of those  
  
things is made a graver offence and is punishable with en  
years, In Clause (4) of the Section in the 8111 the words  
“shall de punished with imprisonment of either description  
fora term” appear to be missing, They nave to ve adced.  
  
Another new Section 380A deals with theft of property  
  
  
Page 309:  
=: 308 2  
  
affected by accident, fire, flood etc. The property thus  
affected cannot be easily protected and committing the theft  
  
of the same ia rather easy and, therefore, this Section is  
  
specifically meant to deal with the offence of theft of such  
property. There is no existing provision which covers such  
  
crime. The changes may be carried out.  
  
Section 381  
  
12.82 The existing Section 381 deals with theft by clerk  
or servant of property The scope of the Section is  
broadened by the new Section 281, The earlier Sectton  
  
covered only theft by clerk or servant but the new Section  
says that whoever being employee in any capacity would be  
  
liable when he commits such theft.  
  
Section 381 A, @ new Section intends to cover  
  
thefts of any property by putting any person in a State of  
  
intoxication. Though in @ way, it may be covered by the  
Section dealing with theft in general but the object appears  
to be to make the sentence severe by making the same rigorous  
  
and the same may be inserted.  
  
Clause 162  
  
12.63 unas  
  
this clause a new section 3854 is sought  
  
be inserted. The proposed section is intendec to cover an  
  
offence of blackmailing with the dishonest intention. The  
  
  
Page 310:  
=: 306  
  
existing section 283 defines extortion and section 385  
  
ys  
down that putting the person in fear of injury in order te  
commit extortion irrespective of delivery of any property  
etc. is an offence punishable under the Code. The Law  
  
Commission in ite 42nd Report examined the questicn whether  
  
the definition of extortion as it exists covers  
  
ry case as  
piacknai? as, for instance, where money is cbtained by  
threatening to expose something true ° but unsavory about a  
person and when such conduct though reprehensible may not  
squarely attract the definition of extortion or at any rate  
an ambiguity is there because {t is not clear whether sucn 2  
  
threat would amount to a threat of injury. The word  
  
ajury’  
js defined as to denote any harm whatever illegally caused to  
any person in body, mind or reputation or pronerty. The wore  
‘dishonesty’ is defined to mean that "whoever does anything  
with the intention of causing wrongfuT gain to any person or  
  
wrongful loss to any person is said to fave acted  
  
dishonestly”. Now the new section 385A is to the effect that  
  
whoever by words either socken or intended  
  
be reac or by  
signe or by visible representations, dishonestty threatens  
any person with the making or publication of any imautaticn——  
which is Tikely to harm his reputation or the reputation of  
any near relative or any person shall be punishable. The  
object underlying the new section is that such an act of  
blackmailing with the dishonest intention is to threaten in  
the manner mentioned therein which may result in harm should  
be made punishable. The Law Commission in the proposed  
  
section did not use the words “any near relative’ but on the  
  
  
Page 311:  
other hand used the words “any other person”. In the new  
section in place of words “any other person” we find the  
words “any near relative of that person.” The change brought  
about in the new section appears to be more coherent than  
make it so wide as to cover harm to any “other person”. A  
doubt may arise whether this new section can properly be  
added after 385 for the reason that the word “extortion” as  
  
defined in Section 383 envisages extortion of some provers:  
  
or putting the person in fear, aut in the new section the  
  
word “dishonestiy” itself indicates the intention of causing  
wrongful gain or wrongful loss which naturally imolies the  
delivery of property or valued security, etc. The further  
usage of the word likely to narm the reputation would mean  
causing an injury. In the present crime scenario the  
  
pvackmailing has become very rampant. Therefore, the new  
  
section dealing with such offences is very necessary  
  
Clause 163  
  
84 Under this  
  
use the words “nay be punished with  
imorisonment for life” occurring in sections 288 and 389 are  
sought to be substituted with imor‘eonment of lesser periods  
Seczions 388 and 389 deal with specific offences of extortion  
by threat or accusation or putting a person in fear in order  
to commit extortion. Under section 388 the threat or  
  
Accusation contemplated is one of putting any person in fear  
  
oF such an accusation of having committed or attempted to  
  
commit any offence punishable with death etc, and the  
  
  
Page 312:  
=: 308  
  
punishment for such extortion is imprisonment upto 10 years,  
and if the accusation is with reference to an offence under  
section 377 then the punishment is imprisonment for life.  
Likewise, under section 389 where in order to commit  
extortion puts a person in fear of accusation of offences  
manticned therein then he would be punishable with a sentence  
extendable to 10 years and if the accusation is with  
reference to the offence under section 377 “may be punished  
with fmorisonment for Jife". A bare perusal of these  
sections would show that sentences are severe and  
disproportionate and perhaps violate the doctrine of  
proportionality. Therefore, the substitution of the words  
‘nay be punished with imorisonment for life” with “lesser  
  
periods of sentence” is called for.  
  
Clause 164  
12.85 Under this clause a new section 396 is sought to be  
substituted in place of existing section. The existing  
  
section lays down that when a person while committing dacctty  
commits murder, every one of the persons participating in the  
‘offence shall be punished with death or imprisonment for life  
or rigorous imprisonment for ten years. Imposition of death  
sentence is nade to be applicable to some categories  
mentioned in the proposed section 302, We have already cealt  
with this aspect in Chapter [12 and suggested chat it should  
be teft to. the court as to in what circumstances the death  
  
sentence can be imoosed. In this context, we have also  
  
  
Page 313:  
referred many of the Supreme Court judgements where the  
concept of rarest of rare cases has bean vividly considered,  
We finally suggest that section 302 must be left as it is.  
For the same reasons in respect of section 396, no change  
are necessary thereby leaving it to the discretion of the  
  
court to give death sentence in appropriate cases.  
  
Clauses 165 4 166  
  
12.66 under these cau  
  
the words “us  
  
any deadty  
weapon, or” in section 397 is sought to be omitted and  
section 378 after the words “at the time of” the words  
“committing or” are sought to be inserted and for the words  
“seven years", the words “five years are scught to be  
  
subst ituted.  
  
Section 397 contemplates even use of any deacly  
  
weapon while committing robbery or dacoity apart from causing  
  
grievous hurt or attemt to cause death or grievous nurs  
Likewise section 398 which deals with attemot to commit  
robbery or dacoity also lays down that if the offender is  
armed with any deadly weapon the imorisonment shall not de  
Jess than seven years. It can be seen that under section 397  
the emphasis is on use of any deadly weapon or whereas in  
section 398 mere being armed with any deadly weapon. This is  
more explanatory. This clause is proper and in the same  
section the words “five years” in piace of “seven years  
  
thereby making the punishment less severe a)so appears to be  
  
  
Page 314:  
310 2  
  
Proportionate with the gravity of offence. However, we do  
  
not find any  
  
on  
  
to why the words “uses any deadly  
weapon” should be omitted in section 387. Otherwise, in a  
  
ca  
  
where @ daco\t being armed-With deadly weapon puts into  
use any deadly weaoon for creating fear without causing  
erievous hurt or attempting to cause hurt may not be covered  
by the section. So it is better to retain the words and  
  
clause 165 may be omitted.  
  
Clause 167  
  
12.6 Under this clause in section 399 for the words “ten  
years", the words “seven years” are sought to be  
Substituted. This offence is with reference to making  
  
Preparation and making the sentence lesser appears to be  
  
Proportionate  
aus  
  
12.68 Under this clause a new section 3994 is sought to  
be inserted. The existing section 399 makes “preparation to  
commit dacoity” punishable. The dacoity is only an  
  
aggravated form of ropbery when committed by five or more  
persons. Therefore, it 1s logical, if preparation to commit  
robbery is also made punishable under section 399A which is a  
  
Rew section. We, suggest that the change may be madi  
  
  
  
Page 315:  
rant  
  
Clauses 169 and 170  
  
12.69  
  
consequential and can be made.  
  
Clause i71  
  
12.70 Anew Explanation I is sought to be added in  
section 403, Consequently renumbering of the existing  
Explanation 18 also sought. The new Explanation which  
  
relates to offence of misapprooriation committed by partner  
in respect of the property belonging to the partnership is  
sought to be covered. Therefore, the proposed changes can be  
  
brought about.  
  
Jause 172-17:  
12.71 Under these clauses some minor changes are proposed  
  
in sections 404 and 408. The changes can be brought about.  
  
Clause 174  
12.72 Under this clause the word “factor” occurring in  
section 408 is sought to be omittee. May be in certain  
  
respects the word “factor” may be obsolete, but there is no  
no harm in retaining this word. Accordingly clause 174 may  
  
be omitted  
  
  
Page 316:  
Clause 175  
  
12.73  
be substitutes by  
expression “stolen property”  
describes the  
  
has been transferred by  
  
question  
  
transferred by committing an offence of cheating  
  
theft or  
  
Under this clause the existing section is sought to  
  
way of giving an extended meaning to the  
  
The existing section 410  
  
stolen property as property a portion whereof  
  
by extortion etc.  
  
arose whether a property a cortion whereof has been  
  
would also  
  
amount to stolen Property. The Law Commission in its 42nd  
Report examined this aspect and racommended that orocerty  
obtained by cheating should also be included. The Law  
Commission also considered the question whether the srocerty  
  
which is subject matter of a  
  
who gets the benefit of general exceptions under Section  
  
83 or @4 can be described as  
Ciersor has been transferred.  
the Law Commission recommended  
transfer of 2 portion of such  
the meaning of stolen property  
  
not be punishable by virtue of  
  
theft committed by an offender  
22,  
  
stolen property when a portion  
  
Having considered ths tissue,  
but logical ana  
  
that it is  
  
property wil) also come within  
though the actual offender may  
  
the aoplicable exceptions. To  
  
amplify the point, an illustration also was recommended to be  
  
added. The proposed new section 410 with {llustration is  
based on the Law Commission's recommendations, which is  
appropriate having regard to the meaning which can logically  
  
be given to the expression stolen property  
  
  
Page 317:  
aa  
  
Clause 176  
  
12.74 Under the existing Section 411 dishonestly  
receiving a stolen property is made punishable and under  
Section 414 dishonestly receiving stolen property in the  
commission of dacoity is made a sraver offence. There were  
suggestions that such dishonast receipt of stolen proverty  
belonging to the government or local authority or corporation  
etc. should te made punishable with very severe punishment.  
Accordingly uncer this clause the words mentioned therein to  
carry out this suggestion are sought to be inserted in both  
  
the Sections which would  
  
rve the purpose.  
  
Clause 177  
  
12.75 under this clause the existing Section 415 is  
sought to be substituted by a new section with some changes.  
  
In the existing section, the damage or harm likely to 5  
  
caused is with reference to only the person deceives but <n  
the proposed section the scope of the damage is scugnt to oe  
extended to not only that person but to any person.  
Therefore, the words “to any person” are virtually substitute  
to the words “to that person” thereby extending the sweep.  
The onty other change is the words “wrongful gain’ after the  
words “reputation or property” are sought to be added which  
are in line with the change contemplated in clause (a) viz.  
adding the words “to any persen", The scope of the existing  
  
explanation is expanded by including that if any person  
  
  
Page 318:  
ata  
  
dishonestly omits to disclose the fact which he is bounc  
under the law to disclose also amounts to deception. We may  
mention here by way of clarity that the B11] does not  
specifically refers to Explanations under Section 415 but ac  
cheating is of such a wide connotation it would be better tc  
retain the illustrations.  
  
Clause 179  
12.76 Under this clause Section 420 is sought to be  
substituted by a new Section with some changes. Likewise  
  
anew Section 420A relating to cheating of public authorities  
in performance of certain contracts is sought to be inserted  
Yet two new Sections, Section 4208 relating to publication of  
false advertisements and Section 420¢ relating to fraudulent  
acts in relation to property of a company are also sought tc  
be added. The existing Section 420 lays down shat whoever  
  
cheats thereby dishonestly induces a person to deliver the  
  
Property to any person or to make or alter, destroy etc.  
shall be punished. A question came up that in a case where  
by deceiving any person fraudulently induces to consent that  
any person shall retain any property would also be covered.  
The Law Commission in its 42nd Report recommended that such =  
clause be added. That is the only change in the proposec  
Section 420 which makes the Section more explicit. The  
  
change may be carried out  
  
  
Page 319:  
The Law Commission in its 23th Report considered as  
to how to tackle the problem of cheating of government on a  
  
large scale by dishonest contractors while supplying goa  
  
The Law Commission in its 42nd Report adverted to this aspect  
and recommended that a provision should be made making such  
Offences punishable. The new Section 4204 i¢ fairly  
exhaustive to cover such offences and the punishment provided  
is mot severe, In the modern trend of trade and commerce, a  
number of false advertisements are being mace to mislead the  
  
public  
  
ough the Law Commission in its 42nd Report has not  
  
adverted to that, the proposed new Section 4208 appears to be  
  
salutary.  
4206  
  
Fraudulent transfer of property in relation to  
companies is sought to be covered by this Section This  
  
Section lays down that whoever with an intent to mislead or  
injure a person or pudtic, makes or causes to make any  
  
transfer of property belonging to a company by a gift, s  
  
etc. or with such intent-at  
  
1S, removes and conceals any  
sign or name plate of the comoany to indicate that the  
company has ceased to exist shall be punishable. This is in  
  
Tine to check fraudulent acts by way of cheating  
  
mentioned  
  
therein.  
  
  
Page 320:  
Clause 173°  
  
42.77 Under this clause the existing sections 426 to 432  
  
are sought to be substituted by new sections covering in  
  
general the offence of mischief. The existing section 425 in  
  
general defines mischief. Sections 426 to 440 are punishing  
  
sections applicable to diff  
  
nt kinds of offenc:  
  
of  
mischief and higher punishments are prescribed in respect of  
aggravated offences of mischief ike destroying public  
property or public services etc. The Law Commission in its  
42nd Report considered these sections and recommended that in  
respect of certain offences the punishment should be  
  
increased from five to seven years. With reference  
  
°  
section 437 it fs also recommended that a reference zo  
aircraft should se added. The Law Commission however  
recommended that sections 426 to 440 should be substituted.  
Section 4268 prescribes punishment for mischief ang the Law  
commission recommended enhancement of sentence from three  
months te one year, Sactions 427 to 436 as proposed by- the  
Law Commission deal with the offence of causing mischief to  
the pudlic property or machinery to the amount of Rs.100/- or  
more, mischief by killing or maiming animals, injury to  
public road, aircraft etc. and mischief by fire or explosive  
substances with intent to destroy place of worshio, So far  
as sections 438 to 440, the only changes are with regard to  
  
sentence and omission of section 439. In the &  
  
, the new  
sections 428 to 432 cover the offences of mischief more or  
  
Jess as proposed by the Law Commission in the above mentioned  
  
  
Page 321:  
sections to be substituted as cer its Report.  
  
examined the new sections 428 to 431. However, we  
that the sentence of three years prescribed under  
the:  
  
tions may be enhanced to five years. Now  
ection 432 proposed in the 8111, we find that the type o-  
mischief covered by this section is with reference tc  
dest-oying, moving or rendering less useful any air route o  
a beacon or lights etc. used for guidance of the aircrat-  
and such a mischief 1s made punishable and the sentence bein:  
seven years, but it is also mentioned there that if it does  
not amount to sabotage then it would be a different matter tc  
  
be covered by section 437. This 8111 was orepa  
  
perhaps having noticed the alarming increase in the types of  
offences of hijacking and rendering air service unsafe, the  
  
Anti-Hijacking Act of 1962 and the Suppression of Unlawfuy  
  
Acts against Safety of Civil Aviation Act, 1982 (SUACA) Werd  
passed. | These two Acts were further amended in 1994 ne  
have discuesed the offence of hijacking in Chapter x with  
reference to the new section 362-A proposed in the 8111 anc  
we suggested that in view of the provisions of tne  
Anti-Hijacking Act as amended it may not be necessary to have  
  
this proposed provision.  
  
In the Suppression of Unlawful Acts against Safety  
of Civil Aviation Act as amended in 1994 a new section 3A was  
  
inserted which reads as follows:~  
  
  
Page 322:  
2 8T8 io  
  
"3a.(1) Whoever, at any airport, unlawfully anc  
intentionally, using any davice, substance or  
weapon-  
  
(a) commits an act of violence which is likely tc  
cause grievous hurt or death of any person; or  
  
(b) destroys or seriously damages any aircraft or  
facility at an airport or disrupts any service at  
the airport, endangering or threatening to endanger  
safety at that airport, shall be punished with  
imorisonment for 1ife and shat} also be Tiable te  
  
Fine.  
  
(2) Whoever attempts to commit, or abets the  
commission of any offence under subsection (1  
shall also be deemed tc have committed such offence  
  
and shal? be punished with the punishment provides  
  
for such offence.  
  
A comparison of the contents of this secticn with  
the contents of section 432 would show that the acts of  
violence mentioned in the latter are in a general way covered  
by the words used in section 34-18 of the SUACA Act.  
Howevar, the disruption of the words used in section 432  
namely, less useful route etc. and the damage to various  
other gadgets would be of a specific type of mischief. To  
make the section more comprehensive and effective we  
recommend that section 3A of the SUACA Act may further be  
  
amended incorporating some of the acts mentioned in the  
  
  
Page 323:  
nage  
  
proposed section 432. We may also add that we are making  
these suggestions, firstly because ws have already  
recommended deletion of new section 362A to the extent  
applicable to the aircraft and also for the reason that so  
many technical issues would be involved in these kinds of  
  
offences and the special courts with the help of technicians  
  
acting as assessors would be in a better position to  
  
understand and decide the complicated questions that may  
  
arisi  
  
If amenament of section 3A is not te be carried out  
in the above manner then the new proposed section 432 may be  
retained in the clause. If $0, then the sentence under  
  
section 432 may be brought in accordance with section 34  
  
Under this clause the new sections 434 to 440 which  
aiso deal with graver or serious type of mischief are sought  
  
to be substituted in the place of the existing sections: wW  
  
have alreacy mentioned that the changes suggested by the Law  
commission with reference to sections 438 to 440 were only  
  
regarding sentence, But in the Gill in these proposed  
  
ctions the mischief caused to the public in  
  
tutions,  
public services and to aircraft etc. with a view to imeair  
the efficiency or impede the working thereof of any of these  
public inetitutions rendering service {8 mace sunishapte  
severely. The proposed sed@ion 434 again deals with mschiet  
to any aircraft or to any docked vessel or to any vessel of  
  
burden of 20 tones upwards with a view to render +t unsafe  
  
  
Page 324:  
320  
  
etc. Section 498 covers the offence of mischief by fire or  
  
any explosive substance intending to cau  
  
or knowing it to  
be likely that thereby would be causing damage to any  
property to the amount of Rs.100/- or upwards. Section 436  
again covers the offence of mischief by fire or any explosive  
etc. which results in destruction of any building or any  
object which is held sacred. The language of this section is  
somewhat analogous to existing section 436. Section 437 ts a  
new one and the offence mentioned therein is “sabotage”  
This section is very exhaustive. A careful reading of this  
section which contains several types of acts of mischief  
  
would rev  
  
1 that the intention of the Legislature is to  
combat the destructive acts of violence with an intent to  
  
the afficiency of the public institutions and the  
  
which in the oresent type of organised crime  
sometimes of internaticna) ramifications. Sub-sections (2)  
has been rightly added in this section. Sub-Sections (3) and  
4(4) also nave been properly added in this very section  
Though preparation by itself in general is not an offence out  
having regard to the magnitude and the oropensities the  
preparation for committing sabotage also is made punishable  
under section 432, but the sentence of three years may oe  
  
enhanced to five years. However, the word “atreraft”  
  
occurring in section 434 may be omitted tn view of our  
suggestions made in Chapter X. In respect of other tyoes of  
  
mischief regarding the aircraft section 3A of the SUACA Act  
  
  
Page 325:  
is to be amended. If not, the section as proposed may be  
retained and the sentence be brought in accordance with  
  
section 3A of SUACA Act.  
  
Clause 181  
  
12.78 Under this clause the word “lawfully” found in the  
  
existing section is omitted in the the sroposed section  
  
the existing section the second limb of the definition of  
  
criminal trespass reads: having lawfully entered inte or  
  
pen such property unlawfully remains The new  
clause (b) in the proposed section 441 also carries out the  
  
same meaning.  
  
Clause 182  
  
12.80 Under this clause sections 443-460 dealing with  
  
various Kinds of house tr  
  
pass are eousht to be substituted  
In the proposed section 442 a new expression ‘burglary’ is  
  
if one  
  
defined and it says that a person commits burglary  
  
commits hous  
  
trespass in order to commit or having committed.  
house-trespass he commits theft. The existing section 443  
gives the meaning of offence in lurking trespass. In the new  
propesed section such an offence is not mentioned. It can be  
  
seen from the existing sections 443, 442, 445 and 446° that  
  
the various  
  
pes of trespassing by night and by house  
breaking oy night are with reference to commit an offence  
  
like theft. The framers of the 8111 by introducing the  
  
  
Page 326:  
=: 322  
  
offence of burglary were of the opinion that the various  
  
types of offences of hous  
  
trespassing or lurking  
house-trespassing by night etc. would be covered. The Law  
Commission having considered some judgments of the High  
Courts and amendments made by the UP Government suggest the  
change in section 441 to which we have already adverted, The  
Law Commission also recommended that sections 443 and 444  
which define lurking house trespass and lurking house  
trespass by night should be omitted and instead of  
house-breaking the burglary should be defined in section 445  
These suggestions of the Law Commission are logically  
reflected in the proposed sections and it may be noticed at  
  
this stage that the existing section 445 §  
  
somewhat lengthy  
and enumerates 51x ways of house-breaking and section 446  
mentions that whoever commits house-breaking after sun-set or  
before sun-rise is said to commit house-breaking by night and  
in other sections the punishment is prescribed. coming to  
the proposed sections me find “burglary” as recommended by  
  
the Law Commission, is defined.  
  
Sections 444 to 447 deal with various types of  
criminal trespass. Some of them prescribe punishment varying  
from 3 years to 7 years. Section 448 prescribes punishment.  
  
for burglary being extended to ten years and with fine  
  
  
Page 327:  
=: 923 s+  
  
ection 449 lays down that whoever whilst,  
committing burglary causes grievous hurt or attempts to cause  
death or grievous hurt to any person shall be punishable with  
imprisonment for life or with rigorous imorisonment for a  
  
torm which may extend to ten years and with fine  
  
Section 450 deals with conjoined liability of other  
  
persons who were also concerned in committing hou  
  
burglary  
during which one of them commits offence under section 449  
  
and all of them made constructively liable.  
  
We have carefully considered these provisions and  
we think that such substitution in the place of the existing  
  
sections will 2 salutary.  
  
ause 18:  
  
Under this clause, Chapter XVIIA is sought to be  
introduced by way of inserting section 462A. A perusal of  
this new section manifestly shows that it is meant to cover  
the offences committed in relation to private employment.  
The relationship between an employer and employee in 2  
private employment is different as compared to the employment  
relating to @ public servant as defined in section 21 of IPC.  
Corruption by public servant is of public concern and 1s  
specifically dealt with under the Prevention of Corruetion  
Act as well as by some of the provisions in IPC. The same  
  
principle cannot be made applicable to private employees even  
  
  
Page 328:  
o: 324 re  
  
if the acts mentioned under the new section amount to a king  
of misconduct with reference to discharge of his duty vis-a  
<vis the employer. If during the course of such employment  
the employee commits offences like forgery, cheating,  
criminal breach of trust, misappropriation etc., then that  
Would definitely amount to an offence punishable under the  
  
Penal code  
  
But other types of acts Tike taking some  
  
remuneration other than jegal remuneration for doing some act  
by themselves may not amount to any one of these offences and  
if such act or omission by the employee results in injury or  
  
Joss to the employer then that would be a  
  
ause for  
dismissing or claiming damages and the tiabitity will be one  
of the tortuous nature. Having carefully considered a11 the  
aspects, we are of the view that this new chapter dealing  
With offences relating to private employment need not de  
  
there. So consequently clause 183 should be omitted.  
  
jause 184  
  
12.82 The Law Commission in its 42nd Report recommended  
that (i) the word “place” be also added in the first  
Paragraoh of section 464 and that (ii) the words “addition  
and “obliteration” be also added in the second paragraoh  
thereof in addition to the existing word “cancellation” and  
that (iii) sections 483 and 464 be combined and the  
iustrations provided thereunder be omitted. Clause 184 of  
  
the 8111 seeks to bring about the aforesaid recommendations  
  
  
  
Page 329:  
1 328 i=  
  
(3) and (if) except (iii). While we agree with the aforesaid  
changes proposed in Clause 184 of the 8111, we propose to  
further examine the scope of section 464 I.P.c.  
  
While section 463 defines “forgery”, section «64  
  
defines “making & false document” and enumerates various  
circumstances which would amount to making of a false  
docyment. It {8 not clearly spelt out under either of the  
  
sections 463 or 464 as  
  
whether forgery of a copy of a  
document or copying a false document or making a false copy  
of a document, would also amount to forgery within the  
meaning of section 464, IPC. It would not be out of place to  
mention that under sections 2 and 4 of the forgery &  
Counterfeiting Act, 1981(U.K.) copying a false document and  
using a copy of a false document, has been specifically made  
punishable. As regards the position in India, there existed  
a controversy on the above point (see H.S,Shamogunderariah v  
State of Mysore, (1968) 1 Mys LJ 294 at p.297: Gobinda »:  
  
Paruiv. State, AIR 1982 Cal.174 at p.178) (cited at page  
3999 of Penal Law Of India by Or.Hari Singh Gaur, 10th Edn.  
and 5 Bom HO Rep co 5é (ref.Law of Crimes (A Handbook) by  
  
V.V.Raghavan, Second Edition, page 931).  
  
However, the Supreme Court has fini  
  
ly setties the  
Position in Rama Shankar Lal v, State of U.P., 1970 Wisc)  
507 by approving the following observations in Essan Chunder  
Dutt « others v. Baboo Prannauth Chowdry & others, 1  
  
Marshalia's Reports 270  
  
  
Page 330:  
326 =  
  
“we regard the forgery of a copy clearly to come  
within the purview of the section just cited.  
Forgery of a copy which was not true copy, mould be  
the offence there rendered penal, and the criminal  
intention to make @ false document serves the  
purpose of a true one would be clear by such act of  
  
forgery.”  
  
We are of the view that though the position is now  
settled it would be desirable to acd an Explanation in  
  
section 464, IPC so as to make it specifically clear that  
  
knowingly committing forgery of a copy of a document or  
knowingly making copy of @ false document or making a false  
copy of a document wouls also amount to forgery within the  
  
meaning of section 464, IPC  
  
We recommend that in order to meet the above  
situation, Explanation 3 in Section 464 may be added on the  
  
following Tines:—  
  
“explanation 3. - Knowingly committing forgery cf  
a copy of a document or knowingly making a false  
copy of a document or copying a false document  
which he knows or believes to be a false document,  
with the intention that ne or another shall use it  
  
to induce somebody to accept it as a copy of a  
  
  
Page 331:  
=: 327  
  
genuine document to do or not to do some act to his  
own or any other person's prejudice, will amount to  
  
making a false document.  
  
Clause 187  
12.83 The proposed changes under sub-clauses (a), (b) and  
  
(c) of clause 187 of the 8111 are on the basis of the reasons  
and recommendations contained under paras 18.8, 18.10 and  
  
18.11 of Chapter 18 of the aforesaid 42nd Report.  
  
By virtue of sub-clause (a), the words “in respect  
of a document which is, or purports to be...” are proposed to  
be substituted in Section 467, IPC for the sake of clarity as  
stated under the preceding paragraoh in respect of Sec. 466  
IPC and also as recommended under para 18.10 of the 42nd  
Report. We also concur with the proposed changes under sub  
clause (a) that the words “authority to adopt a son or  
Should be substituted by the words “authority to adopt any  
person or “ as a female may also be adopted as a daughter  
(vide the Hindu Adoption and Maintenance Act, 1956)  
Besides, adoption of a female child may also be permissible  
under the laws or customs or usages governing other  
  
religions.  
  
  
Page 332:  
Under sub-clause (b) the proposed substitution by  
the words “or an acquittance” is in the interests of clarity  
a8 recommended in the revised form of Section 467 IPC as  
  
stated under Para 18.11 cf the 42nd Report.  
  
By virtue of sub-clause (c) the words “with  
imprisonment for life, or” are sought to be omitted under  
Section 467 IPC. This is necessary because the imprisonment  
for life provided in Section 467 for forgery of valuable  
securities appears to be too harsh as observed in the 42nd  
  
Report. We also concur with this change.  
  
Clause 188  
12.84 The proposed changes in sections 470 anc 471 of the  
  
Penal Code are on the basis of the reasons and  
recommendations contained under paras 18.19 to 18.18 of  
  
Chapter 18 of the aforesaid 42nd Report.  
  
Section 470, IPC is proposed to be substituted  
because the existing section 470 which defines a “forged  
document” as “a false document made wholly or in part by  
forgery” is defective as observed by the Law Commission in  
sts 42nd Report, (para 18.13) thereof. This is in view of  
the fact that forgery is itself defined in Section 483 read  
  
with Section 464, IPC as “making a false documei  
  
eo with the  
requisite intent, so that, when one reads section 470 and  
  
Sections 463 and 464 together, one meets the idea of “making  
  
  
Page 333:  
329 2+  
  
a document” twice. By virtue of second part of clause 16  
  
section 471, IPC is proposed to be substituted. The proposed  
changes are in accordance with the recommendations of the Law  
  
Commission and the changes can be carried out.  
  
Clause 190  
  
12.88 Under this clause the existing section 474 is  
  
sought to be substituted by the proposed new  
  
ction. The  
change suggested $s only peripheral and the proposed new  
section simply lays down that whoever has in his possession  
any document of the description mentioned in both the  
sections 468 and 487 knowing the same to be forged and  
intending to use the same fraudulently or dishonestly shall  
  
be punished with rigorous imprisonment of seven years.  
  
Clause 194  
  
By virtue of clause 134 of the 8171, certain  
amendments are sought to be made under the Explanation Clause  
of Section 489A of the Code. These include (a) the  
  
Explanation Clause shail be numbered as [A Explanation I and  
  
in the Explanation as so numbered, the words  
  
nd includes a  
  
traveller's cheque” shail be inserted at the end; (b) the  
  
following shall be inserted as Explanation  
  
Explanation IT, For the removal of doubt +t 1s  
  
  
Page 334:  
hereby declared that in this  
  
ction and in  
  
Sections 4898, 489C, 4890 and 489€ the expression  
  
“currency notes” includes a foreign currency note”.  
  
Since the proposed changes are clarificatory  
  
mature, the changes sought to be made under sub-clauses (a)  
  
and (b) of clause 194 of the 8111 may be carried out.  
  
Clause 196  
12.87 Clause 196 of the Bi11 seeks to insert a now  
  
section 489 F which provides for punishment for ‘preparation’  
  
for committing offences under Section 4894 to Section 4@ge.  
  
Counterfeiting of currency notes is a serious  
offence since it affects the economy of the country. we  
  
agree with the insertion of the proposed new section 4s3F.  
  
Slavse 197  
  
12,88 The existing Chapter XIX entitled “OF THE CRIMINAL  
  
REACH OF CONTRACTS OF SERVICE” contains only Section 491.  
  
The Law Commission in its 42nd Report under para  
19.2 has recommended for deletion of the chapter XIX of tPc  
which includes Section 491, IPC mainly on the ground that it  
is not of practical utility. & close look at the provision  
  
mould indicate that the provision is imolemented to protect  
  
  
Page 335:  
a: 3a  
  
the contractual rights of helpless or incapable person who,  
by reason of youth or of unsoundness of mind, or of a disease  
or bodily weakness is helpless or incapable of providing for  
his own safety or of supplying his own wants. In other words  
the revision intends to protect the rights of such persons  
‘on the grounds of humanity. Such persons may not be in a  
position to seek civil remedy. Therefore in the present  
context of the human rights, it may be desirable to retain  
this provision with enhanced punishment. We recommend that  
the existing punishment may be enhanced from three months to  
one year and the existing limit of imposing fine of Rs.200  
may be substituted by the word “fine” only so that the Court  
  
may fix the quantum of fine depending upon circumstances of  
  
the case. We also recommend that this offence be made  
  
cognizable, if information relating to the Commission of the  
  
offence is given to an officer incharge of a Police Station  
by the persor’ aggrieved by the offence or by any person  
related to him by blood, marriage or adoption or by any  
public servant belonging to such class or category as may be  
  
notified by the State Government in this behalf.  
  
This clause also seeks to substitute Chapter XIX.  
and insert thereunder new sections 490, 491 and 492 providing  
  
for the offences against privacy.  
  
The Law Commission examined the various aspects of  
right to privacy under Chapter 22 of its 42nd Report and  
  
recommended for insertion of a new Chapter on “offences  
  
  
Page 336:  
=: 332 2+  
  
against Privacy”. While adopting the recommendations of the  
Law Commission, with certain modifications, Clause 197 of the  
Bills  
  
ke to substitute the existing chapter XIX of the  
"onal Code for the said purpose which contains new sections  
490, 491 and 492. Under the proposed section 490 use of  
artificial listening or recording apparatus for listening the  
to or recording any conversation in any premises without the  
knowledge or consent of the person in possession of the  
Premises is made punishable for imprisonment upto six monthe  
In case any one publishes such conversation while knowing  
that it was so listened to or recorded, he will be liable for  
a higher punishment of imprisonment upto one year. the  
Proposed section 491, makes the taking of unauthorised  
photography is made punishable for imprisonment upto six  
  
months, and if one pubjtshes such photograph, the  
  
prisonment may extend to one year, However, the proposed  
Sec.492 provides for exceptions regarding certain acts of  
  
public servants, and persons acting under their directions.  
  
Right to privacy is a vast subject and its scope  
  
has been widened considerably und  
  
Article 21 of the  
Constitution of India by the Supreme Court under its various  
decisions. Various countries abroad have also dealt with the  
various aspects of right to privacy in separate legislations.  
For example, the Law Reform Commission of Hongkong in its  
Report of December 1996 entitled “Privacy: regarding the  
Interception of Communications”, has referred to various  
  
legislations in different countries regulating interception  
  
  
Page 337:  
2 333  
  
of communi cat jon  
  
Tt observed under para 4.11 of its Report  
that several jurisdictions, including common aw  
  
Jurisdictions, have 1e9i  
  
ation regulating interception of  
  
communications and although the scope of protection by such  
  
legislation vari  
  
a1) the statutes apply criminal eanctions  
to safeguard the privacy interests of individuals in one way  
or another. The Law Reform Commission of Hongkong suggested  
various legislative measures under Chapter 6 of its Report to  
provide protection against undue interference with the  
privacy of the individual and in the interest of public  
security. Similarly, the Law Reform Commission of the  
Ireland in its Consultation Paper headed "Privacy:  
Surveillance and Interception of Communications’ has  
provisionally recommended for the enaction of a separate Act  
to protect the privacy of the individual from intrusive  
  
surveillance.  
  
Tt may be pointed out that in the National seminar  
fon Criminal Justice in India, organised by the Law Commission  
on 22nd & 28rd February, 1997 New Delhi, many participants  
viewed that the proposed provisions under clause 197 of the  
B11] are bare and sketchy and do not meet the existing  
demands of society for protection of right of privacy of  
  
individuals. A view was also expressed in that Seminar that  
  
the exceptions carried out under the proposed section 492  
  
virtu  
  
'¥ render the provisions of the proposed sections 430  
  
and 491 meaningless.  
  
  
Page 338:  
72 336 i  
  
In view of the above discussion, we are of the view  
that a separate legislation should comprehensively deal with  
various aspects of offences against right to privacy in the  
context of the present day needs. The Law Commission is  
proposing to take up a comprehensive study on this subject  
separately. It is, therefore, recommended that clause 197 of  
the Bi1l which seeks to substitute the existing Chapter xtx  
  
of the Penal Code, may be deleted.  
  
Clause 198  
  
12.89 Under this clause the existing  
  
jection 494 is  
Sought to be substituted by néw section, We have discussed  
  
the proposed amendment in Chapter 1X and for the ri  
  
stated therein. The proposed new Section can be substituted  
but as already noted, another Explanation 2 should be added  
  
in accordance with the principle laid down by the Supreme  
  
court in Smt, Sarla Mudaal v. Union of India, (AIR 1995 SC  
1531).  
  
Clause 199  
  
12.90 Under this Clause again, the existing Section 437  
  
is sought to be substituted by a new Section. This Section  
deals with offence of committing adultery. We have discussed  
about this proposed amendment in Chapter No. Ix in detail  
  
and we suggested some chang  
  
by way of corrections in the  
  
proposed Section so as to make the «oman also punishable and  
  
  
Page 339:  
<2 335  
  
to carry out the consequential changes in the provision of  
Cr.P.C. Accordingly, in the proposed Section, the words “by  
  
the man” have to be omitted.  
  
Clause 201  
  
12.91 Under this clause the existing section 500 is  
Sought to be substituted. The Law Commission in its 42nd  
Report considered this aspect and observed that certain  
changes are necessary in the existing section. Under the  
existing section the punishment for defamation is one of  
simp}e imorisonment which may extend to two years, The Law  
Commission considered the suggestions for enhancing the same  
bUt opined in its 42nd Report that there is no practical  
Justification for doing so. They. however, recommended that  
the imprisonment to be imposed should be of either  
description and accordingly suggested a change. another  
suggestion made is that, where the defamatory statement has  
been published in a newspaper and thus made known to a large  
number of persons, the fact of the offender's conviction  
should be similarly published and costs should be made  
recoverable from the convicted person as if it were a fine.  
The amendments are in conformity with the recommendations of  
the Commission and may be carried out. Likewise, the other  
Sub-sections (1) and (2) are also in accordance with the  
  
recommendations of the Law Commission.  
  
  
Page 340:  
Clause 203  
  
12.92 The Law Commission has recommended in para 22.6  
read with para 7.9 of its 42nd Report that Clause (a) of  
sub-section (1)) of Section 505, IPC should be incorporated  
with certain modifications in Chapter VII as new section 138A  
  
on the lines mentioned in the Report.  
  
The Commission further recommended under para 22.6  
read with para 8.26 of 42nd Report that the rest of the  
section 505 should be taken in Chapter VIII as new section  
  
158B:  
  
By virtue of clause 52 of the Bil], Chapter VII is  
proposed to be substituted and under the proposed section  
138A thereof, the provisions of existing sub-section (1) of  
section 505, IPC are proposed to be transposed with”  
modifications. Similarly, by virtue of clause 58 of the  
Bill, sub-sections (2) & (3) of the existing section 505 are  
proposed to be transposed with modifications, as section  
  
163C.  
  
The Law Commission in para 22.6 read with para 7.9  
of its 42nd Report, recommended that clause (a) of  
sub-section (1)) relating to statements made with intent to  
cause mutiny, dereliction of duty, insubordination etc.  
among the armed forces should find a place in the Chapter  
  
relating to offences against the armed forces. The  
  
  
Page 341:  
-: 3387 se  
  
Commission recommended to add it as section 138A on the lines  
  
stated under para 7.9 of the Report, The proposed section  
  
138A is in accordance with the said recommendations to which  
  
We agree.  
  
However with regard to the rest of section 508  
  
section 505(2) and (3) of the Penal code, the Commiesion  
  
recommended under pr.22.6 read with para 8.26 that the  
  
Provisions could well’ be regarded as cgeating offences  
against public tranquiility and should be taken tn Chapter  
VIII as section 1588. It felt that the provisions of section  
505(2) and (3) of the Penal Code really relate to public  
tranquillity. This part of the section is very similar to,  
though net wholly covered by section 153-A and thus it would  
be logical to include it in Chapter 8 immediately after  
section 183-A.  
  
A perusal of the proposed section 153-C under  
  
clause 58 of the B11! shows that these provisions are on the  
Tines of the proposed section 1588 recommended under vara  
8.26 of the 42nd Report which incorporates the provisions of  
section 505 (2) and (3) with certain modifications. Thus the  
Provisions under the existing section 505 may be omitted  
Since these are covered and transposed in the proposed  
  
provisions as stated above.  
  
  
Page 342:  
Glause 204  
  
12.93 By virtue of clause 204, after section 507, a new  
Section 507A is proposed to be,inserted. Proposed section  
  
507A provid  
  
Punishment with. imprisonment of either  
description for a term which may extend to two years, or with  
fine, or with both for causing damage etc. to places open to  
  
public view. The term “place op  
  
to public view" and  
“objectionable matter” are comprehensively clarified under  
  
the sub-section (2) of proposed section 507A.  
  
Proposed section 507 A has a laudable objective for  
  
creating an orderly society and we endorse the same.  
  
Clause 208  
  
12.94 The Law Commission in its Forty second Reoort  
  
recommended that the last chapter of the Indian Penal code  
  
containing section 511 be omitted and, instead, a new Chapter  
YB entitied “Attempt” consisting of two sections 120¢ and  
  
1200 be inserted after Chapter VA on the lines indicated by  
  
the Commission under para §.84 thereof. Accordingly, clause  
206 of the Bil) seeks to omit chapter XXITI of the Indian  
  
Penal cod:  
  
+ After having carefully considered the matter, we  
are of the view that section $11 is working well and there is  
Ro need to omit it and transpose its provisions to a new  
Chapter VB containing sections 120¢ and 1200 for the reasons  
  
discussed in Chapter VI of this Report.  
  
  
Page 343:  
=1 339  
  
CHAPTER = XIIT  
  
CONCLUSION AND RECOMMENDATIONS  
  
We have now come to the end of our detailed stusy  
of the Code. The reconmendations which we have made for its  
improvement are numerous, ranging from verbal changes  
designed to remove ambiguities and clarify underlying ideas,  
to substantial changes with a view to its simplification and  
modernisation along with some additions in the existing  
  
Provisions.  
  
13,02. No doubt, the evaluation of The Indian Penal code  
(Amendment) 6111, 1978 was the main task in this Report. The  
said 8111 was based on 42nd Report of the Law Commission, and  
Could not become an Act in spite of having been passed by the  
Rajya Sabha as the then Lok Sabha was dissolved. Seside the  
said 8111, the Law Commission also examined a number of new  
Problems and issues which gave rise to the necessity of  
undertaking a further comprehensive revision of the Indian  
  
Penal Code in the light of current socio-lega Scenario.  
  
13.02. We have given special attention to the extent and  
Nature of the punishments prescribed in the Code for various  
offences and suggested modifications to bring them into  
accord with modern notions of penology. We have indicated in  
  
each Chapter of this Report, corresponding to a chapter of  
  
  
Page 344:  
=: 340 c=  
  
the Code, the provisions which should be made in lieu of, or  
tn addition to, the existing provisions, and also the  
amendments, both major and minor, to be made in them. A sum  
  
up of the principal recommendations made in each chapter is  
  
as under:  
  
CHAPTER = 1  
12.04. AU this stage, we may also mention that under  
Clause 197 of the IPC (Amendment) 8i11, 1978, for the  
  
existing Chapter XIX, a new Chapter bearing the sane number  
(Chapter XIX) {¢ sought to be inserted to deal with “offences  
against Privacy". In the existing Chapter XIX, three  
sections namely, sections 490, 491 and 482 are mentioned.  
But out of them sections 490 and 492 were repealed and the  
only remaining section 491 deals with “Breach of Contract” to  
protect the contractual rights of the helpless persons. In  
the proposed new Chapter XIX which is sought to be  
substituted in place of the existing Chapter, sections 491 to  
492 are inserted and they deal with “Offences against  
Privacy” like use of artificial listening or recording  
apparatus either to listen or to record conversation of  
person or persons without their knowledge or consent or  
snaking unauthorised photographs, etc. We have dealt with  
this clause in detail in Chapter x11 after duly referring to  
the contents of a2nd Report as well as the concept of right  
to privacy as extended under Article 21 of the Constitution  
  
and also various reports of foreign Law Commissions and  
  
  
Page 345:  
341 ce  
  
vitimately recommended that these offences. cannot  
appropriately be incorporated in the Indian Penal Code and  
that a separate legislation should be there to  
  
comprehensively deal with such offences against privacy.  
  
It {8 also mentioned that Law Commission is  
proposing to take up a comprehensive study on this subject  
separately as early as possible.  
  
(Para 1.11)  
  
13.05. CHAPTER ~ IT  
SENTENCES AND SENTENCING - POLICIES s PROCEDURE  
  
1 In the context of fast changes in the sociolegal  
scenario warranting application of the reformative theory of  
punishment, it is necessary to modify provisions of the  
BORSTAL School Act, 1970, Juvenile Justice Act, 1986 and  
Probation of Offenders Act, 1958 suitably,  
  
(Para 2.08)  
  
2. In the Indian Penal Code, the offences are divided  
into bailable and non-bai lable depending upon the gravity of  
the offence. About 120 offences in the Indian Penal Code are  
non-cognizable. It is voiced that some trivial offences  
  
affecting public order also can lead to serious developments  
  
  
Page 346:  
(342 in  
  
if they are not dealt with promptly and, therefore, it is  
desirable that such offences are made liable for public  
  
intervention.  
  
It is recommended that the offences punishable  
under sections 290, 298, 431, 432, 434, 504, 505 and 510 de  
  
made cognizable.  
  
(Para 2.06)  
2 The amounts of fine to be imposed should  
considerably be enhanced and it should, as far possible,  
be substituted for short-term imprisonment. Further, the  
  
poor victims of uses and abuses of criminal law should be  
compensated by way of reparation and that the amounts of fine  
Prescribed long ago have lost their relevance and impact in  
the present day and the fines imposed have no relation to the  
economic structure of society and necessary element of  
  
deterrence is generally absent.  
  
An examination of the various sections in the code  
where sentence of fine, is crovided for, reveals that from a  
  
minimum fine of Rs.100/- it varies up to Rs.  
  
+000/-. In  
  
respect of most of the offences it is below Rs.500/-.  
  
Therefore, a change regarding the quantum of fine  
should be made in all those sections correspondingly, at  
  
least by 20 times and make a provision in the Code of  
  
  
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+: 343  
  
criminal Procedure  
  
garding the powers of the First Class  
  
Magistrates to impose such a fine.  
  
( Para 2.09)  
4 The proposed amendment vide clause 18 of the IPC  
(Amendment) 8111, 1978 making imprisonment for life rigorous,  
  
that is, with hard labaour, is necessary.  
  
(Para 2.11)  
  
5. Clause 27 of the IPC (Amendment) B11, 1978,  
provides the insertion of anew Section 744 exclusively to  
deal with punishment of community service. It means that  
convict will have to perform the service without any  
remuneration. The implementation part of it provides that.  
the work is to be performed under proper supervision as per  
arrangements to be made by the State Government or any local  
  
authority.  
  
The Commission felt that there are a number of  
difficulties in enforcing the same like that supervisory  
authority will nave to see whether the convict is working and  
rendering service for the number of hours specified and if he  
fails to do so by way of default, he has to be sentenced  
  
thereafter.  
  
  
Page 348:  
1 aed  
  
Therefore, we think an open air prison system is  
better suited from the point of view of correctional measure:  
  
rather than the proposed punishment of community service  
  
( Para 2.13)  
  
6. Anoth  
  
suggestion was wheths  
  
the punishment  
disqualification from holding office” should be incorporated  
in section $3 of the Indian Penal Code. In some types of  
cases particularly involving public servants and othe:  
persons holding office in corporations, companies, registered  
  
societies  
  
etc., ending in conviction should necessarily  
entail with the disqualification from holding office, but  
such a course is intrinsically connected with their  
respective service rules and regulations. It 1s a matter of  
common knowledge that in almost all such service rules we  
find some provision or other disqualifying such a person  
  
after conviction, from holding the office.  
  
It is recommended that it would be appropriate to  
leave the issue to be decided by the concerned authorities  
under ail those rules and regulations because incidenta) ly  
some other questions pertaining to the service conditions may  
also arise which warrant a further inquiry.  
  
(Para 2.14)  
  
LA The Law Commission in its 184th Report on the Code  
of Criminal Procedure has recommended insertion of a new  
  
Provision, namely, 357A providing for framing victim  
  
  
Page 349:  
compensation scheme by the  
  
pective State Governments under  
which the compensation can be awarded to the victims on the  
Vines indicated therein wherever it is found to be necessary  
apart from the compensation awarded by the court under  
section 357 out of the fines. We may also indicate that  
awarding sufficient compensation depends upon many  
Circumstances which require some inquiry. Further in some  
cases an order for payment of compensation need not  
  
necessarily be by way of punishment.  
  
Therefore, we are of the view that it is not  
appropriate to include order for payment of compensation in  
section 53 by way of punishment.  
  
(Para 2.1  
  
8 Another punishment which is sought to be includes  
in section 53 is ‘public censure’, namely, publication of the  
name of the offender and details of the offence and sentence  
The proposed Section 74¢ provides for imposition of the  
punishment by way of public censure in addition to the  
substantive sentence under sub-section (3) and this is  
Limited to offences mentioned in chapters XII, XIII, sections  
272 to 276, 383 to 388, 403 to 409, 415 to 420 and offences  
under chapter XVIII of the Code as offences under proposed  
Rew Sections 420A and 462A under the Indian Penal Code  
(Amendment) 8111, 1878. These are all offences where persons  
entrusted with some public duties commit offences. Such a  
  
punishment has great relevance in respect of anti-social  
  
  
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offences, economic offences, otherwise called white-collar  
  
offences particularly committed by sophisticated persons. It  
  
is of common knowledge that while these offences affect a  
  
rge number of people, the offenders are not readily booked.  
kowever at least in such cases which end in conviction, the  
punishment of public censure is likety to act as a greater  
deterrence because of the fear of infamy resulting from the  
publicity and consequent repercussions Tike loss of business,  
etc, Such a censure is one of the prescribed punishments in  
Russia, Columbia and other countries. In India such form of  
punishment is included in the Prevention of Food Adulteration  
Act and Income-tax Act, The Law Commission in its 42nd  
Report considered the inclusion of such a punishment and  
recomended that such additional punishment would be useful  
in the case of persons convicted for the second time of any  
of the offences under chapter XII and XIII, Tike extortion,  
criminal misappropriation, cheating and of offences revating  
  
te documents.  
  
Tt is recommended that such puDlic censure by way  
of an additional punishment should be there and accordingly  
be included in section 53 of the Indian Penal Code and it  
should be left to the discretion of the court regarding  
{imposition of the same in selective cases  
  
(Para 2.16)  
  
  
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<2 347  
  
9 In respect of number of offence  
  
the punishment  
prescribed is “imprisonment or with fine or with both”. re  
is voiced in various workshops that in view of the changes in  
  
the modern society, the type of crimes and the repetition of  
  
or the frequent occurrence of certain types of  
  
1» it 18 necessary that the punishment should be  
  
imprisonment and in addition fine also.  
  
Having examined various provisions in the IPC and  
the modern trends of crime, we are of the view that in  
respect of the offences under sections 13, 183A, 160, 168 to  
175, 177, 182, 221, 289 to 291, 292, 294 to 298, 336, 468 and  
477A, the punishment should be imprisonment as well as Fine.  
Incidentally, we also suggest that the extent of imprisonment  
should be enhanced suitably in respect of these offences.  
  
(Para 2.17)  
  
13.08. CHAPTER = 111.  
  
1 The Commission carefully considered the  
from several angles after making comparative study of the law  
of other countries and after examining various judgments ti}?  
  
i  
  
te rendered by the apex court.  
  
  
Page 352:  
-: 348  
  
We reiterate the recommendation of Law Commission \_\_  
in its 3th Report for retention of the capital punishment,  
but to be awarded in accordance with the guidelines laid down  
  
by the Supreme court.  
  
(Para 3.07)  
  
It is already recommended to retain section 302 as  
it is instead of reading any limitations into the same  
regarding imposition of death sentence for the reason that it  
is impossible to put them in any straight jacket for the  
reason that what circumstances make a case a “rarest of rare  
  
one” cannot be fixed by way of a legal provision  
  
The Law Commission recommends that no change is  
  
required in Section 302 as is proposed in clause 125 of the  
inl.  
  
(Para 2.10)  
3 Clause (3) of section 302 of IPC (Amendment) 8111,  
1978 is providing for running of sentence of life  
  
imprisonment consecutively instead of concurrently. It will  
  
be a retrograde step in accord with deterrent and retributive  
  
theories of the past as observed by the Supreme Court.  
  
Therefore, we do not approve the proposed clause  
(3) of section 202 in the a117.  
  
(Para 3.12)  
  
  
Page 353:  
= 34g:  
  
4 Section 303 of the Indian Penal Code provides:  
303. Punishment for murder byte.  
convict.whoever, being under — sentence of  
  
imprisonment for 1ife commits murder, shall ve  
  
punished with death.”  
  
The Supreme court in Mithu v. State of Punjab  
(1983) 2 SCC 277, declared that the aforesaid provisions of  
Section 302 violate the guarantee of equality contained in  
Article 14 as also the right conferred by Article 21 of the  
  
Constitution.  
  
We have carefully considered the various provisions  
of the 8111 and feel that after section 303 1s omitted, the  
second part of Section 307 which provides that “when any  
  
Person offending under this Section is under sentence of  
  
imprisonment for life, he may, if hurt fs caused, be punished  
with death” cannot be retained on the same analogy and  
Son the b  
  
princt, 8 of which section 203 has been held to  
  
be arbitrary and oppressive and violative of Article 14 and  
21 of the Constitution. We accordingly recommend deletion of  
  
the second part of Section 307.  
  
(Para 3.14)  
  
  
Page 354:  
12.07. HAPTER - IV  
  
te Though the IPC (Amendment) 8111, 1978 is silent  
about the offence of criminal conspiracy but the Law  
Commission earlier in its 42nd Report recommended that the  
  
eri  
  
inal conspiracy for petty offences should not be covered  
  
under this Chapter. The!  
  
fore, a revision of Section 120 of  
  
this Chapter was recommended.  
  
Now after re-examining, “it is recommended that  
  
there is no need to disturb Chapter VA as it works well even  
  
it covers conspiracy for petty economic crimes. (Para  
4,08)  
2 The Law Commission in its 42nd Report had  
  
recommended that Section 1208 should be revised to make the  
section self-contained. Gut the same was not incorporated in  
  
the IPC (Amendment) Bill, 1978.  
  
We are of the view that a Criminal Conspiracy is a  
separate offence and punishable separately from the principal  
offence. Chapter YA works like residuary provision for the  
crime of conspiracy. Therefore, no need to disturb the  
current provisions pertaining to criminal conspiracy.  
  
(Para 4.13)  
  
  
Page 355:  
136  
  
13.08. CHAPTER V  
  
EINAI CAI  
1 Recently, various sort of financial scams in  
various fields like banks, hospitals, non-financial  
  
institutions involving crores of rupses have surfaced.  
  
We are of the view that this problem can be tackled  
  
if the following new section, namely, Section 12088 is  
  
serted in the IPC  
  
"12088. Criminal conspiracy to defraud cublic  
institution, etc,  
  
When two or more persons agree to defraud a public  
institution or a local authority, fraudulently or  
@ishonestly, to cause, or cause to be done,  
wrongful gain to themselves or to any person, or to  
cause or cause to be done, wrongful loss to such  
public institution or local authority, such an  
agreement, is designated a criminal conspiracy to  
defraud and whoever is a party to such criminal  
conspiracy shall be punished with imorisonment for  
  
vif  
  
or with imprisonment, of either description for  
a term which may extend to ten years, and shall  
  
also be Tiable to fine.  
  
  
Page 356:  
Provided that no agreement shall amount to a  
criminal conspiracy to defraud unless some act  
besides the agreement is done by one or more  
  
parties to such agreement in furtherance thereof.  
  
Explanation ~ Any bank or financial organisation or  
company or body or body corporate, which is owned  
  
or controlled by the Government, shall be deemed to  
  
be a ‘public institution’ for the purposes of this  
section”.  
(Para §.08)  
13.09. CHAPTER -vI  
ATTEMPT - Insertion of né ions  
  
120 © & 120 D by way of new Chapter vB in the Bi  
  
1 The Indian Penal Code (Amendment) 8i11, 1978 made a  
Provision for this new Chapter under clause 45. Clauses 46  
to 51 of the 8111 seem to be incorporated by mistake in this  
Chapter i.e. Chapter VI of the IPC, Therefore, this new  
Chapter ought to be confined to sections 120¢ and 1200 only  
  
which are dealing with “Attempt”.  
  
After examining from various angles, {+  
recommended that thera is no need to insert proposed sactiona  
in the IPC as Section 515 is working well and covers the said  
  
aspects. Therefore, in view of it, no need to introduce a  
  
  
Page 357:  
new Chapter VB containing Section 120 and 1200, If need be  
  
the language of section 511 may be amended.  
  
(Para 6.16)  
13.10. CHAPTER — VII  
7 Th a  
SECTIONS 121 - 130  
1 Having considered the provisions of section 121-A,  
  
we are of the view that no changes are necessary. Similarly  
  
sections 121, 122 and 123 need not be disturbed  
  
already  
suggested in the 42nd Report of the Law Commission except,  
the words "imprisonment of either description” be substituted  
  
with "rigorous imprisonment”.  
  
(Para 7.03)  
  
2. The proposed section 123 A in the 6111 {s based on  
the recommendations of the Law Commission in its 42nd Report.  
However, the 8111, apart from incorporating new section 123A  
jn the TPC, sought to add an Explanation thereto. We are of  
the view that there is no harm in having the said  
Explanation.  
  
cPara 7.11)  
  
2. The Law Commission in its 42nd Report had  
recommended the revision of section 1244 dealing with  
sedition. The same has been incorporated in the IPC  
  
(Amendment) Bi11, 1978 under clause 48. After reexamining  
  
  
Page 358:  
the matter, we are of the view that section 124A may be  
substituted as recommended.  
  
(Para 7.18)  
  
On the basis of  
  
lier recommendations made by the  
Law Commission in its 42nd Report, Prevention of Insults to  
  
National Honour Act, 1971 was enacted.  
  
Therefore, the proposed section 1248 in the IPC  
(Amendment) 8571, 1978, is not required to be inserted in the  
IPC and the same may be deleted from Clause 48 of the 8411.  
  
(Para 7.21)  
  
We agree with the proposed Clause 42 of the IPC  
  
{Amendment} 8411, 1978 that section 125 of the IPC may be  
  
revised as follows:  
  
,  
“125. Waging war against any foreien state at  
peace with India, - whoever wages war against the  
  
Government. of any foreign State at peace with  
India, or attemots to wage such war, or abets the  
waging of such war, shall be punished with  
imprisonment of either description for a term unich  
may extend to ten years, and shal! also be Table  
  
to Fin  
  
(Para 7.25)  
  
  
Page 359:  
ran HAPTER ~ Vv  
  
a iT\_AND ATT!  
  
1 Law Commission in its 42nd Report had recommended  
that Section 309 is harsh and unjustifiable and it should be  
  
repealed.  
  
However, on re-examining, we recommend that Section  
309 should continue to be an offence under the Indian Penal  
Code and Clause 131 of the B11) be deleted.  
  
(Para 8.17)  
  
13.92. CHAPTER - 1X  
QEFENCES AGAINST WOMEN AND CHILDREN  
  
1 The Law Commission recommends that clause Thirdly  
  
in Section 375 be amended as under:-  
  
Section 375: A man is said to commit rape-  
  
Firstly-  
  
Secondly-  
Thirdly = With her consent, when her consent has  
  
been obtained by putting her or any person in whom  
  
  
Page 360:  
2.  
  
violence  
  
=1 386 =  
  
she is interested, in fear of death or of hurt, or  
of any other injury.  
  
(Para 9.34)  
  
To deal with the issue of increasing sexua?  
  
fon women and female children, the Law Commission  
  
recommends that the offence of sexual assault be added to the  
  
existing offence of outraging the modesty of women in Section  
  
354 and punishment be increased from two years to five years.  
  
Accordingly, Section 364 be amended on the following lines  
  
“954. Assault or criminal force to woman with  
intent to outrage her modesty.- Whoever assaults or  
uses criminal force to any woman, intending to  
outrage her modesty or to commit sexual assault to  
her or knowing it to be Iikely that he will thereby  
outrage her modesty or commit sexual assault“t"  
her, shal? be punished with imprisonment of either  
  
description for a term which may extend to five  
  
years and shai) also be liable to fine.  
  
Expanding the scope of Section 354 in the above manner, would  
  
in our view, cover the varied forms of sexual violence other  
  
than rape on women and female children  
  
(Para 9.35)  
  
  
Page 361:  
=: 387  
  
2. The Law Commi  
  
jon is further of the view that the  
offence of eve teasing falls within the scope of Section S09  
and there is no need for a new section 376F as recommended by  
the National commission for Women. However, the Law  
commission feels that the quantum of punishment be increased  
  
from one year to three years and fine.  
  
Accordingly, we recommend that Section 509 be  
  
amended in the following manner:  
  
“section 509: Whoever, intending to incult the  
modesty of any woman, utters any word, makes any  
sound or gesture, or exhibits any object, intending  
that such word or sound shail be heard or that such  
  
gesture or object shail be si by such woman, or  
  
intrudes upon the privacy of such woman, shall be  
punished with imprisonment of either description  
for a term hich may extend to 3 years and sha}!  
  
aso be Tiable to fine  
  
(Para 9.35)  
  
4 We recommend that another Explanation, Explanation  
  
3 be added to section 494 which reads as under:~  
  
  
Page 362:  
“Explanation 3: The offence of bigamy is committed  
when any person converts himself or herself to  
another religion for the purpose of marrying again  
  
during the subsistence of the earlier marriage  
  
(Para 9.42)  
  
5. About Adultery, the IPC (Amendment) 8111, 1978 has  
brought in the concept of equity between sexes in marriages  
  
vis-a-vis offence of adultery in the subsequent section 497.  
  
However, the Law Commission recommends that the  
phraseology of clause 199 has to be modified on the following  
  
lines to reflect the concept of equality betwee  
  
sexes.  
  
Accordingly clause 199 shall be amended as under:  
  
"437 Adultery.- Whoever has sexual intercourse with  
@ person who is, and whom he or she knows, or has  
reason to believe, to be the wife or husband, as  
the case may be, of another person, without the  
consent or connivance of that other person, such  
sexual intercourse not amounting to the offence of  
rape, commits adultery, and shall be punished with  
imorisonment of either description for a term which  
may extend to five years, or with fine or with  
both.”  
  
(Para 9.48)  
  
  
Page 363:  
959 :~  
  
If section 497 is amended on the lines indicated  
above, sub-section (2) of section 198 of the Code of Crimina)  
Procedure, 1973 would also need to be suitably amended.  
  
(Para 9.47)  
  
We recommend that in view of the growing incidence  
of child sexual abuse in the country, where unnatural offence  
is committed on a person under the age of eighteen years,  
there should be a minimum mandatory sentence of imerisonment  
  
of either description for a term not 1.  
  
than two years, but  
which may extend to seven years. The court shall, however,  
have discretion to reduce the sentence for adequate and  
special reasons to be recorded in the judgment. Consequently  
  
section 377 be amended on the following Tines:-  
  
"377. Unnatural offence:  
  
= Whoever voluntarily has  
carnal intercourse against the order of nature with  
any man or woman shall\_-be\_ punished with  
‘imprisonment of either description for a term which  
may extend to two years, or with fine, or with  
both; and where such offence is committed by a  
person over eighteen years of age with a person  
under that age, he shall be punished with  
imprisonment of either description for a term which  
shai1 not be Tess than two years but may extend to  
  
seven years and fine.  
  
  
Page 364:  
360  
  
Provided that the court may for adequate and  
special reasons to be recorded in the judgment,  
impose 8 sentence of imprisonment of either  
  
description for a term of less than two years  
  
Explanation - Penetration is sufficient to  
  
constitute the carnal intercourse necessary to the  
  
offence described in this section,  
  
(Para 9.82)  
  
8. In the opinion of the Law Commission, the existing  
Section 378(2)(f}, and the Law Commission's recommencat ions  
for amendment of Sections 384 and 377 ara adequate to deal  
  
with child sexual abuse  
  
The Law Commission, therefore, does not recommenc  
the incorporation of a new Section 354A as suggested in  
clause 146 of the IPC (Amendment) 8111, 1978.  
  
(Para 9.59)  
  
13.43. CHAPTER X  
ABDUCTION. INCIDENTAL TO HIJACKING  
  
1. Clause 149 of IPC (Amendment) Bi11, 1978 proposed  
to insert anew Section 2624 in respect of hijacking of  
  
aircraft, The proposed clauses 35 and 37 of the IPC  
  
  
  
Page 365:  
=: 36t ce  
  
(Amendment) B11], 1978 also seek amendments in Section 103  
and 105 of the IPC, inter alia, regarding hijacking of  
  
aircraft.  
  
We recommend that there is no need to insert  
Section 3624 as well as to amend Sections 103 and 105.  
  
(Para 10.15)  
  
2. The Law Commission is aware that making direct  
recommendation in International taw is not within its  
Jurisdiction, Nevertheless, we recommend incidentally that  
there is an urgent need to have an International court of  
Civil Aviation, Tt is in the interest to prevent the crime  
of international civil aviation, The proposed court wit?  
  
deal with the crimes of Air-Hijacking, mischief in the air  
service, etc. where the jurisdiction will arise in two or  
  
more countries. It is expected from the Government of India  
  
to take up this recommendation with the International comity  
as and when possible. —  
  
(Para 10.25)  
  
3 About the crime of “Hijacking of Vehicles” etc.,  
the following Clause 2 in Section 362A may be inserted in the  
IPC, The Law Commission also recommends that Clause(1) as  
proposed in the the IPC(Amendment) 8111, 1878 may be omitted.  
  
The Clause (2) may be read as under  
  
  
Page 366:  
=: 362  
  
“362A(2).- Whoever on board a vehicle in India or a  
vehicle registered in India unlawfully by force or  
show of threat or force or by any other form of  
intimidation seizes such vehicle or exercise:  
control over it or attempts to seize or exercise  
control over it for the purpose of taking it toa  
place other than the place of its destination or  
for any other purpose, is said to commit the  
offence of hijacking of vehicle and whoever commits  
such hijacking shat! be punished with rigorous  
imprisonment for a term which may extend to ten  
  
years and shall also be Viable to Fine.  
  
Explanation- In thie Section-  
  
(4) The word “Vehicle” include any vesse) but does  
not include an aircraft."  
  
(Para 10.30)  
  
a Clause 179 of the IPC (Amendment) 6111, 1978 te  
amend Section 432 may be dropped.  
  
(Para 10.20)  
  
5. The words “helicopter, air-glider ete.” may be  
inserted in Section 2 (a) of the Anti-Air Hijacking Act 1962,  
as well as in the Suppression of Unlawful Acts Against safety  
of Civil Aviation Act, 1982  
  
(Para 10.30)  
  
  
Page 367:  
=: 363 =  
  
13.14. HAPTER — XI  
DOCUMENT = SCOPE OF ITS DGEINITION  
  
re The term “document” as defined in Section 29 in IPC  
  
needs to be enlarged.  
  
Therefore, we recommend that an Explanation 3 may  
  
be inserted in Section 29 of the IPC on the folowing linea:-  
  
Explanation 3. - The term “document” also  
incluces any disc, tape, sound track or other  
device on or in which any matter or image or sound  
is recorded or stored by mechanical or other  
means.”  
  
(Para 11.08)  
  
2 Tf the proposed amendment in Section 29 is carried  
out then there would also be a need for conseauentia}  
amendment. of the term of the “document” under Section 3 of  
the Indian Evidence Act, 1872 on the lines indicated above  
  
(Para 11.08)  
  
  
Page 368:  
13.18. HAPTER — X11  
‘THE\_INDIAN PENAL CODE (AMENDMENT) BILL, 1978  
  
We have carefully perused the IPC (Amendment) 8411,  
1978 which have {£1 amendments, 98 substitutions, 92  
omissions and 25 insertions. The changes proposed in the  
8117 contemplate to bring about the basic penal statute of  
this country updated to remove lacuna and make it useful for  
meeting the optimum needs. We find that some of the changes  
  
contemplated go beyond the recommendations made by the  
  
Commission in its 42nd Report. Therefore, we think it  
necessary to re-examine all clauses of the 8111.  
1 The amendments sought in clauses 1, 6, 7, 8, 72  
  
18, 38, 40, 44, 48, 47, 49, 50, 51, 59, 58, 56, 57, 59, 50,  
61, 62, 65, 89, 70, 71, 72, 72, 74, 75, 76, 77, 78, 79, 80,  
81, 82, 83, 84, 85, 86, 87, 8B, 89, 90, 92, 98, 96, 97, 98,  
99, 100, 101, 102, 103, 104, 108, 106, 107, 108, 109, 112,  
113, 114, 195, 116, 447, 118, 420, 121, 126, 127, 129, 192,  
193, 135, 196, 198, 139, 140, 141, 142, 149, 147, 148, 150,  
153, 154, 156, 157, 158, 185, 126, 189, 191, 192, 199, 195,  
200, 202, 205 and 207 are only inconaoquential and the sans  
may be carried out.  
  
(Para 12.02)  
  
2, Clauses 2 to 8 - By these clauses, some amendments  
are sought in Sections 4 to 17 of the Code. We do not  
  
recommend any changes in Section 8,9 and it of the IPC.  
  
  
Page 369:  
=: 368  
  
Consequently, clauses 2 to 8 of the Bi1T have to be deleted.  
Remaining amendments in various Sections are pertaining to  
  
various words and explanations used in the Code and the  
  
ame  
are based mainly on 42nd Report.  
  
(Para 12.03)  
  
a Slause 9- By virtue of this clause Sections 12 to  
21 are sought to be substitured  
  
We are of the view that unless major chang  
  
brought out, it is not desirable to insert new clause and  
make them amenable to any of the relevant penal provisicns  
  
(Para 12.04)  
  
a 1 40= By virtue of this clause, the  
Gefinition in the existing Section 25 is sought to be  
  
substituted.  
  
We agree to the proposed substitution.  
  
(Para 12.08)  
  
5. Clause 11 = By this clause, an amendment  
  
Section 29 of the IPC is sought.  
  
In view of the changes in the audio and video  
technology and computers, it is recommended that following  
  
Explanation (3) may be added to the existing Section.  
  
explant  
  
tion (3):= The term ‘document’ includes any  
  
  
Page 370:  
=: 386 :-  
  
disc, tape, sound track or other device on or in  
which any matter or image or sound is recorded or  
stored by mechanical or other means”.  
  
(Para 12.06)  
  
6. Clause 12 = In this clause, existing  
Sections 31, 32 and 33 which define the word “wil!” are  
  
sought to be omitted.  
  
on examining, we are of the view that there is no  
harm in retaining the existing Sections 31, 32 and 33 of the  
IPC, Therefore, Clause 12 has to be omitted.  
  
(Para 12.07)  
  
se 13 = By virtue of this clause, the  
  
words “sever  
  
persons” whenever they occur are sought to be  
  
substituted by the words “two or more persons”.  
  
We are of the view that by carrying out this  
amendment the language of Section 34 becomes more explicit  
For the same reason the expression “several persons  
eccurring in Sections 35 and 38 also can be substituted by  
  
the expression “two or more persons”  
  
(Para 12.08)  
  
8. Slause 14 - under this clause it 1s proposed  
  
to substitute Section 40 by another Section  
  
  
  
Page 371:  
=: 367  
  
We recommend that Section 40 may be substituted on  
the following Tines -  
  
“Section 40- Offences which mean any act or  
omission made punishable by any law for the time  
being in force and capital offence means offence  
for which death is one of the punishments provided  
by the Taw".  
  
(Para 12,09)  
  
8 fa 15 = by this Clause Section 43 is  
  
sought to be substituted by a new Section.  
  
We agree that Section 43 needs amendment as sought  
in this clause.  
  
(Para 12,10)  
  
10. clause 16 = Under this clause, existing  
sections 48, 49 and 50 defining words “vessel, year, month,  
Section” respectively are sought to be omitted for the  
  
reasons that they are defined in the General Clauses Act.  
  
We are of the view that these Sections need not to  
be omitted and accordingly Clause 16 of the B11] has to be  
deleted.  
  
(Para 12.11)  
  
  
Page 372:  
Wy Clause 17 The existing Section 52 defin  
  
the word "good faith” and Section 52A defines the word  
  
“harbour”, As per this clau:  
  
+ oth these Sections are to be  
  
substituted by new Sections.  
  
We agree to the substitution of Sections 52 and  
52a.  
  
(Para 12.12)  
  
12. Clause 18 - Under this clause, the existing  
  
Section 53 is sought to be substituted.  
We do not endorse the addition of new forms of  
punishments except public censure.  
  
(Para 12.13)  
  
13. Glause 19 - Under this clause Sections $4,  
  
55 and 55 of the Indian Penal Code are sought to be omitted  
  
We agree and are of the view that clause 19 is very  
  
appropriate in view of the changes in the Cr.P.c.. (Para  
12.44)  
14. Clause 20 - Under this clause the words  
  
imprisonment for 20 years”, are sought to be substituted by  
  
the words "rigorous imprisonment for 20 years  
  
  
Page 373:  
369 :-  
  
We agree to the proposal.  
  
(Para 12.18)  
  
15. Clause 21 = By virtue of this clause,  
  
actions 64 and 65 are to be substituted.  
  
We are of the view that the proposed amendments are  
incidental and they may be carried out  
  
(Para 12.18)  
  
16. Clause 22 = By this clause Section 66 of the  
  
IPC is sought to be omitted  
  
In view of the revised Sections 64 and 65, Section  
66 may be omitted.  
  
(Para 12.17)  
  
17 Clause 23 = Under this clause, Sections 87 and 68  
  
are sought to be substituted.  
  
We are of the view that the existing Sections may  
  
e substituted.  
  
(Para 12.18)  
  
18 i ro Under this clause the ext  
  
no  
Section 69 providing for termination of imprisonment on  
  
Payment of proportional part of fine is sought to be omitted.  
  
  
Page 374:  
=1 370  
  
We are of the view that this omission is necessary  
tn view of the new revised Section 88.  
  
(Para 12.19)  
  
19. Clause 25 = Under this clause the existing  
Sections 70, 71 and 72 providing for the limitation of time  
for levy of fine and limit of punishment in case made of  
  
several offences are sought to be substitutes.  
  
We are of the view that amended Sections are  
  
comprehensive and the amendments may be carried out.  
  
(Para 12.20)  
20. 1 = Under this clause, Sections 73  
and 74 providing for solitary confinement by way of  
  
punishment is sought to be omitted.  
We are of the view that it is necessary to omit  
these two Sections  
  
(Para 12.21)  
  
at. clay  
  
Under this clause new Sections  
  
74a, 748, TAC and 740 are sought to be incorporated.  
  
We are of the view that proposed Sections 744 and  
748 need not to be incorporated. we also do not recommend  
  
incorporation of new Section 74D. Consequently, the new  
  
  
Page 375:  
Section 74¢ providing for additional punishment by way of  
  
censure can be numbered as 74A and may be added.  
  
(Para 12.22)  
  
22. se 31 - Under this clause, Section 94 is  
Sought to be substituted. Also new Sections 94a and 948 are  
Sought to be inserted.  
  
We are of the view that with the classifications  
  
indicated, Section 94 may be substituted. we  
  
180 recommend  
that the proposed new Section 944 and 948 be deleted from  
  
claus  
  
31, If necessary some of such provisions may be added  
  
in the other enactments including the Companies act to  
  
strengthen the same to m  
  
te such a situation.  
  
(Para 12.23)  
  
23. Clauses 82 to 37 = Under these clauses, some of the  
  
existing Sections relating to right af private defence of  
persons and property are either sought to be amended or  
substituted. However, in the 8111, no change in respect of  
  
Sections 96 to 98 is mooted.  
  
aa We recommend that the third paragraph in the  
existing Section be included in the proposed Section and  
rearrange the clauses.  
  
(Para 12,24)  
  
  
Page 376:  
Gi1) We are of the view that the proposed change in  
  
Section 100 is appropriate  
  
ay) Clause 34 seeks an amendment in the existing  
  
Section 101. This change appears to be appropriate.  
  
Ww In the proposed Section 103 of the 8117, there is a  
new clause (d) relating to the offences of mischief to  
Property, house, or intended to be used for the ourpose of  
Government or any corporation. Two more new clauses (e) ang  
  
(f) are sought to be added in the proposed section  
  
In this context, it is recommended that 1f the new  
  
Section 3624 is to be added then thers is no need of clause  
  
(2), Clause (Ff) can be retained but may be renumbered as  
fe  
  
ws Under clause 36, a minor amendment to Section 104  
is provosed. We are of the view that the changes may be  
  
carried out  
  
(Para 12.24)  
  
a4 Clause 37 ~ Under this clause, the existing  
Section 105 is sought to be substituted by a new Section  
  
bearing the same number,  
  
  
Page 377:  
373  
  
We are of the view that in the proposed new claus  
  
(e), the words “hijacking of  
  
ireraft” have to be omitted.  
  
(Para 12.25)  
  
28. fa to44- (1) Clause 28 of the rp  
(amendment) 8111, 1978 has incorporated some changes.  
Section 108 as mentioned in clause 28 is in conformity with  
the reconmendation made by the Law Commission in its 42nd  
Report and, therefore, we do not recommend any further  
change.  
  
(Para 12.26)  
  
ai under clause 39, changes sought are minor in nature  
  
and are warranted  
Gin The changes suggested in clauses 40-44 are  
warranted.  
  
(Para 12.28)  
  
26. clause 45 = under this clause, a new Chaoter  
  
ve seeks to insert new Sections 120C and 1200 def ining  
  
attempt and punishment for offence of attempt. The existing  
  
Section 511 is also sought to be omitted.  
  
We have carefully examined this clause and  
recommend that Section 511 be retained and this clause be  
  
deleted (Para 12.27)  
  
  
Page 378:  
374  
  
ar. Clause 47 — Under this clause, a new Section  
128A {8 sought to be inserte  
  
We are of the view that the proposed Section may ve  
inserted.  
  
(Para 12.28)  
  
28. 1 4g = Under this clause, the existing  
Section 124A which deals with Sedition is sought to be  
substituted by a new Section bearing the same number. we  
  
agree.  
  
We are of the view that the proposed Section i248  
  
need not be inserted.  
(Para 12.29)  
  
23. Clause 52 = Under this clause, the existing  
  
Chapter VI is sought to be substituted by a new Chapter  
  
bearing the same nunber.  
  
We are of the view that there is no harm in  
  
substituting the existing chapter.  
  
(Para 12.30)  
  
  
Page 379:  
278 +  
  
20. clause 54 = By this clause, a new Section  
147A is sought to be added.  
We agree with the proposed insertion.  
  
(Para 12.31)  
  
a Clause $8 =  
  
+ 8 new Section  
183C is sought to be added.  
  
We agree that Section 153¢ may be added.  
  
22 Clauses 63 4% 04 - Clauses 63 and 64 of the 8111  
seek amendments in Sections 161, 162, and 163 IPC.  
  
Since these Sections had already been repealed by  
the Prevention of Corruption Act, 1988 and transposed  
  
thereto, clauses $3 and 84 have to be, therefore, omitted.  
  
33. Clause 68 Under this clause, a new Section 1664 1s  
sought to be inserted.  
We are of the view that the proposed Section 1858  
may be inserted.  
(Para 12.34)  
  
34 Clause 66= Under this Clause, a new Section  
  
187A 18 sought to be inserted in Chapter Ix.  
  
We agree that the proposed Section may be inserted.  
  
(Para 12.35)  
  
  
Page 380:  
378:  
  
35 Clause 91 = under th  
  
clause, two new  
sections 198 A and 198 8 are sought to be added in chapter  
  
xr,  
  
We think that addition of new Sections 198A and  
  
1988 is unneces:  
  
ry. Consequently, clause 91 has to be  
omitted.  
  
(Para 12.36)  
  
26 Jause 93 - By this clause, anew Section  
  
207A is sought to be added.  
  
we are of the view that the new Section 207A may be  
inserted in the Coge  
  
(Para 12.37)  
  
Clause 94 = ey this clause, the existing  
Section 211 ig sought to be substituted oy a new Section with  
  
the same number.  
  
The change proposed is an appropriate one.  
  
(Para 12.38)  
  
38. o 190 = ey this claus  
  
the existing  
section 229 is sought to be substituted by the two new  
  
Sections, namely, 229 and 229A,  
  
  
Page 381:  
esate  
  
We are of the view that both the Sections are very  
much needed in the Code.  
  
(Para 12.39)  
  
39. Clause 110 = By this clause, a new Section  
  
254A is sought to be inserted in the Code.  
  
We are of the view that the new Section may be  
inserted in the Code.  
  
(Para 12.40)  
  
40. Glause 111 Under this clause  
  
the Code, new Sections 263A, 2638 and 263¢ are sought to be  
  
for Section 2624 of  
  
substituted  
  
We agree to the proposal.  
  
(Para 12.41)  
  
an Clause 112 By this clause, the substitution of  
words “two years” for “one year" in the Sections 264-267 is  
  
sought to be contemplated.  
  
We agree to the proposal.  
  
(Para 12.42)  
  
42. Clause 119 - Under this clause, a new Section  
  
279A is sought to be inserted.  
  
  
Page 382:  
378 io  
  
Having regard to the incré  
  
in the volume of road  
  
traffic and indiscriminate use of vehic!  
  
whether they are  
roadworthy or not, such a provision is very much needed.  
  
(Para 12.  
  
42. Clause 122 = Under thie clause, a new  
sub-Section is sought to be inserted in Section 292 of the  
  
IPC.  
  
We are of the view that the proposed amendment  
would be appropriate addition, However, we are of the view  
that the sentence may be made “three years” in Section 292 in  
place of “two years” to be on par with the new secion 2928.  
(Para 12.44)  
  
44. Glause 123 under this clause, after Section  
  
292, a new Section 292A is sought to be inserted to deal with  
an offence of printing etc. of grossly indecent or  
  
scurrilous matter or matter intended for blackmail.  
  
We are of the view that Section 292A may be  
inserted.  
  
(Para 12.45)  
  
  
Page 383:  
=: 379  
  
45. Clause 124 = The existing Section 2948 deals  
with offence of keeping lottery office. ay this clause this  
Section is sought to be substituted by a new Section. New  
Section 2948 for sale distribution etc. of jottery tickets  
  
is also sought to be added.  
  
The proposal is salutary one.  
  
(Para 12.48)  
  
48. Clause 125 - By this clause, Section 302 is  
sought to be substituted by the new Section bearing the same  
  
number.  
  
We are of the view that this clause may be deleted  
  
as there is no  
  
J of any amendment in Section 302  
  
(Para 12.47)  
  
a7, Clause 128 = under this clause, a new Section  
  
3048 is sought to be inserted.  
  
At the outset we must point out that in 1986 by  
amending Act 43 of 1986, the exisitng Section 304 8 dealing  
  
with dowry death was inserted.  
  
‘Therefore, we recommend that this may be inserted  
tn Section 304A as sub-section (2).  
  
(Para 12.43)  
  
  
Page 384:  
1 380:  
  
4a. Clause 130 - Under this clause, Sections 307  
and 308 are sought to be substituted,  
  
We are of the view that there is no need to disturb  
the existing Sections 207 and 308 of the Code except the  
second part of existing Section 307.  
  
(Para 12.49)  
  
49, Clause 131 - Under this clause, the existing  
Section 309 which makes attempt to commit suicide punishable  
  
38 sought to be omitted.  
  
We are of the view that the existing Section 309  
has to be retained and the clause be omitted.  
  
(Para 1  
  
$0)  
  
50. Clause 134 = Under this clause, the existing  
Section 320 defining grievous hurt is sought to be  
  
substituted.  
  
We are of the view that the proposed changes are  
only peripheral, but a little more explanarative. Therefore,  
that can be carried out.  
  
(Para 12.51)  
  
  
Page 385:  
= 381  
  
si. Clause 137 - Under this clause, the existing  
Section 328 is sought to be substituted by anew Section. In  
content, both the Sections are same except in the new Section  
in place of “unwholesome drug or other thing” the words  
“unwholesome substance” are inserted which are of same effect  
but Tittle wider.  
  
(Para 12.52)  
  
52. Clause 144 — under this clause, the existing  
  
Sections 241 to 344 are sought to be substituted  
  
We are of the view that the number of persons on  
the basis of constructive TiabiTity can be limited to two or  
nore persons as we find in the proposed amendment in Sections  
34, 38 and 38 IPC, Therefore, the oroposed clause may de  
amended accordingly.  
  
(Para 12.53)  
  
53 © 1a  
  
= Under this clause, a new Section  
3644 dealing with offence of indecent assault on a minor 1s  
  
sought to be inserted.  
We are of the view that this clause has to be  
omitted.  
  
(Para 12.84)  
  
sa clause 149 = under this clause, the ©  
  
cine  
  
Section 362 is sought to be substituted by the new Section  
  
  
Page 386:  
We are of the view that the proposed change say  
enlarge the meaning of abduction and the same may be carried  
out.  
  
(Para 12.55)  
  
55 Clause 151 = Under this clause, a new Sectisn  
3848 dealing with offences of kidnapping is sought <> 4s  
  
inserted.  
  
Having regard to the present crime scenartc sf chor  
  
nature, the new Section ig a salutary one and, tang 9  
  
inserted in the code.  
  
Para 12.48  
  
56. Clause 152 - Under this clause, the =  
  
Section 266 and 368A are sought to be substituted by whe <2  
  
Section  
  
We are of the view that che change -2 sn  
  
consequential and we endorse the same.  
  
37 Jause 155 - Under this clause the =  
  
Section 368 1s sought to be substituted  
  
We endorse the substitution  
  
(Para 13.8?  
  
  
Page 387:  
=: 383  
  
58 159 = under this clause, the existing  
Sections 375 and 376 are sought to be substituted by new  
  
Sections 375, 376A to 378C.  
  
We are of the view that this clause may be omitted.  
However, We recommend a modification in clause 3 of Sectton  
375 by inserting the word “injury”.  
  
(Para 12.59)  
  
59. Clause 160 = under this clause, the existing  
  
Section 377 {s sought to be substituted by a new Section,  
We endorse the substitution on the lines suggested  
in Chapter Ix.  
(Para 12.60)  
60. Clause 161 = (3) Unger this clause, the  
existing Sections 320 and 381 are sought to be substituted.  
Also a new Section 3804 is proposed to be inserted.  
  
The changes may be carried out.  
  
(Para 12.85)  
  
  
Page 388:  
a1 384 =  
  
Gi) Similarly, @ new Section 381A needs to be insertea  
  
in the Code.  
  
(Para 12.82)  
at. clause 162 = Under this clause, a new Section  
385A is sought to be inserted. The proposed Section is  
  
intended to cover an offence of blackmailing with the  
  
dishonest intention.  
  
We are of the view that the new Section dealing  
with such offences is very necessary and insertion may be  
carried out.  
  
(Para 12.63)  
  
82. Jause 163 - Under this clause, the words  
may be punished with imprisonment for life” occurring in  
Sections 388 and 389 are sought to be substituted with  
  
imprisonment of lesser periods.  
  
We are of the view that the substitution of the  
  
words “may be punished with imprisonment for life” with  
“lesser periods of sentence” is called for.  
  
(Para 12.84)  
  
63 tea = Under this claus  
  
+ Section 395  
  
ig sought to be substituted.  
  
  
Page 389:  
985 :-  
  
We are of the view that no change in this Section  
  
(Para 12.65)  
  
oa Glauses 165 & 166 — Under these clauses, the  
words “uses any deadly weapon, or” in Section 397 is sought  
to be omitted and in Section 398 after the words “at the time  
of" the words “committing or” are sought to be inserted and  
for the words “seven years", the words “five years” are  
  
sought to be substituted.  
  
We are of the view that it is better to retain the  
existing words and the said clauses may be omitted.  
  
(Para 12.86)  
  
6s. Clause. 167. under this clause, in Section  
  
399 for the words “ten years",the words “seven years” are  
  
sought to be substituted  
  
We are of the view that as the offence in this  
Section is with reference to making preparation, making the  
sentence lesser appears to be proportionate  
  
(Para 12.67)  
  
68. clause 168 = Under this clause, a new Section  
  
399A is sought te be inserted.  
  
  
Page 390:  
=: 386 s+  
  
We agree to the proposal and the required change  
  
may be carried out.  
  
(Para 12.68)  
  
er! Glauses 169 and 179 - By virtue of these  
Clauses, a few words in Section 400-402 are sought to be  
  
substituted.  
  
The proposed changes are only consequential and we  
are of the view that the same may be carriad out.  
  
(Para 12.89)  
  
ea.  
  
171 A new Explanation I is sought to  
  
be added in Section 403.  
  
We are of the view that the proposed changes may be  
brought about.  
  
(Para 12.70)  
  
58. 172-173 = Under these clauses, some minor  
  
changes are proposed in Sections 404 and 408  
  
We are of the view that the proposed changes may be  
carried out.  
  
(Para 12.71)  
  
70. Slause 174 = Under this clause, the word  
  
“Factor” occurring in Section 409 is sought to be omitted  
  
  
Page 391:  
o: 387 c=  
  
We are of the view that there is no harm ir  
  
retaining this word. Accordingly, this clauss may be  
omitted.  
  
(Para 12.72)  
mM. Clause 175 - under this clause, the existing  
  
Section 410 is sought to be substituted.  
we are of the view that the proposed new Section is  
appropriate and may be carried out.  
  
(Para 12.73)  
  
72 Clause 176 - By this clause, the existing Sections  
  
471 and 414 are sought to be amended.  
  
we aor  
  
to the amendments in both the Sections  
  
(Para 12.74)  
  
73. Clause 177 = under this clause, the existing  
  
Section 41§ is sought to be substituted.  
  
We are of the v  
  
that the substitution may be  
carried out but we may also mention that it would be better  
  
to retain the ext  
  
ng illustrations in the Section.  
  
(Para 12.75)  
  
  
Page 392:  
14. } 178 = under this clause, Section 420  
je sought to be substituted. New Sections namely, Section  
  
420A, 4208 and 4200 are also sought to be inserted.  
  
The proposed changes may be carried out.  
  
(Para 12.76)  
  
75. clause 179 = Under this clause, the existing  
Sections 426 to 432 are sought to be substituted by new  
  
Sections covering in general the offence of mischief  
  
wo wo have examined new Sections 426 to 431 and  
  
recommend that the sentence of “three years” prescribed under  
  
ch of these Sections may be enhanced to “five years  
  
an About Section 432, it may be mentioned that after  
the IPC (Amendment) 8111, 1978, special legislations were  
brought in 1982 which were amended in 1994, as mentioned in  
  
chapter X. We recommend deletion of new Section 362A.  
  
For the same reasons, we recommend that Section 3A  
of the Suppression of Unlawful Acts Against Safety of Civil  
Aviation Act, 1982(SUACA) may be amended. If amendments to  
section 3A of this Act is not to be carried out ta the same  
manner, then the proposed Section 432 may be retained in the  
  
claus  
  
but the sentence under Section 432 may be brought 1”  
accordance with Section 3A of the said Act.  
  
(para 12.77)  
  
  
Page 393:  
389  
  
16. Clause 180 - Under this clause, the new  
Sections 434 to 440 ere sought to be substituted.  
  
wm We recommend that the word “Aircraft” occuring tn  
the proposed Secticn 434 may be omitted in view of our  
suggestion made in Chapter x,  
  
an In rescect of other types of mischief regarding  
  
aircraft, Section 34 of the SUACA is to be amended. if not,  
  
the Se  
  
on as proposed may be retained and the sentences be  
  
brought in accordance with Section 24 of the SUACA Act.  
  
cay In the proposed Section 438, the sentence cf three  
years may be enhanced to five years.  
  
(Para 12  
  
Clause 181 ~ Under this clause, Section s41  
  
is sought to be substituted,  
  
However, it may be mentioned that the proposed  
  
amendment does 1%  
  
carry any substantial change.  
  
(Para 12.739)  
  
78. Clause 182 — Under thes clause, Sectsans  
  
443-460 are sought to be substituted  
  
  
Page 394:  
=: 390 :-  
  
We have considered this provision and we think that  
such substitution in the place of the existing Section wi1l  
be salutary.  
  
(Para 12.80)  
  
79. lausé = under this clause, Chapter XVITA  
  
ig sought to be introduced by way of inserting Section 462A.  
  
We are of the view that this new Chapter dealing  
with offences relating to private employment is not  
necessary. So consequently this clause may be omitted.  
  
(Para 12.81)  
  
a0. Clause 184 = By this clause, an amendment is  
  
sought to be inserted in Section 464 of the IPC.  
  
We recommend that an Explanation 3 in Section 464  
  
of the IPC on the following lines may also be added-  
  
“Explanation 3. Knowingly committing forgery of  
a copy of a document or knowingly making a false  
copy of a document or copying a faise document  
which he knows or believes to be a false document,  
  
with the intention that he or another shal! use it  
  
to induce somebody to accept it as a copy of  
  
genuine document to do or not to do some act to his  
  
  
  
Page 395:  
=: 394  
  
own or any other person's prejudice, will amount to  
  
making a false document.  
  
(Para 12.82)  
  
er. Clause 187 = Under this clause, Section 467  
is sought to be amended.  
  
We agree to this change  
  
(Para 12.83)  
  
ae. Clause 198 = By this clause, substitution of  
  
new Sections for existing Section 470 ang 471 is sought.  
  
We recommend that the changes may be carried out.  
  
(Para 12.84)  
  
a3. Clause 190 - Under this clause, the existing  
  
Section 474 1s sought to be substituted.  
  
The change suggested is only peripheral and the  
same is endorsed.  
  
(Para 12.85)  
  
aa clause, 194 ~ By virtue of this clause  
certain amendments are sought to be made under the  
  
Explanation part of Section 489A of the Code  
  
  
Page 396:  
Since the propo:  
  
3 changes are clarificatory in  
nature, the same may be carried out.  
  
(Para 12.86)  
  
as. Clause 196 - By this clause, a new Section  
  
489F is sought to be inserted.  
  
We agree to the insertion of the proposed Section  
  
(Para 12.87)  
  
86 Clause 197 — Under this clause, the existing  
Chapter XIX is sought to be substituted regarding offence  
  
against privacy.  
  
a) Since there is a need to have separate legislation  
  
fon the subject, the proposed substit  
  
tion may not be carried  
  
out.  
  
aa We further recommend that existing Section 431 IPC  
  
may be retained and the punishment ther.  
  
may be enhanced  
  
from “thres rand the existing limit of  
  
months” to “one  
  
imposing fine of a  
  
200/= may be substitued by the words  
  
“fine only". And the offence be inade cognizab)  
  
(Para 12.88)  
  
87. Clause 198 — Under this clause, the existing  
  
Section 494 is sought to be substituted.  
  
  
Page 397:  
We think that the proposed new Section may be  
substituted but as already mentioned, the Explanation 3  
should be added in accordance with the principle laid down by  
the Supreme court  
  
(Para 12.89)  
  
as. Clause 199 ~ Under this Clause, the existing  
Section 487 is sought to be substitutes  
  
We have already suggested some changes in chapter  
IX, In the proposed Section, the words “by the man” have te  
be omitted. :  
  
(Para 12.90)  
  
aa. Clause 201 - Under this clause, the existing  
  
Section 500 is sought to be substituted.  
  
We recommend that the changes bs carried out  
  
(Para 12.91)  
  
90. Clause 203 - By this clause, the omission of  
Section 505 is sought.  
  
4 perusal of the proposed Section 1$3c under clause  
58 of the 8111 shows that these provisions are on the tines  
of the proposed Section 1588 recommended under para 8.25 of  
the 42nd Report which incorporates the provisions of Section  
  
505 (2) and (2) with certain modifications  
  
  
Page 398:  
Thus the provisions under the existing Sectt@  
may be omitted since th  
  
are covered and transposed 2  
  
Proposed provisions as stated above.  
  
(Para 12.88  
  
at. Clause 204 ~ By virtue of this clause, = ‘new  
  
Section 507A is proposed to be inserted.  
  
We endorse the proposa?.  
  
(Para 12.93)  
  
92. Clause 206 = By this clause, it is sought  
that Chapter XVII, containing only Section 511, of the Indian  
Penal Code shall be omitted.  
  
We are of the view that Section 511 is working well  
  
and there is no need to omit it.  
  
We recommend accordingly.  
  
/  
  
, hewn Moy  
A Dayee  
(WUSTECEK. JAYACHANORA REDDY)  
: CMATRMAN  
- se Det  
ee ES Ae  
  
(JUSTICE R.L.GUPTA) (CH.G.KRISHNAMURTHY) (MRS ALICE JACOB}  
  
MEMBER MEMBER weNBER  
  
Orrnsc  
(RL. WENA  
  
MEMBER-SECRETARY