LAW COMMISSION OF INDIA

THIRTY-THIRD REPORT

REPORT ON SECTION 44, CODE OF CRIMINAL PROCEDURE, 1898

September, 1967

GOVERNMENT OF INDIA
MINISTRY OF LAW

CHAIRMAN,
LAW COMMISSION,
5, Jorbagh, New Delhi-3.
December 15, 1967.

Shri P. Govinda Menon,
Minister of Law,
New Delhi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the 33rd Report of the Law Commission on section 44 of the Code of Criminal Procedure, 1898—Suggestion to add a provision relating to reporting of, and disclosure in evidence about, offences relating to bribery. The Report deals with a suggestion of the Central Bureau of Investigation. The circumstances in which the subject was taken up by the Commission are stated in paragraph 2 of the Report.

2. After the suggestion for amendment was taken up for consideration, a Press Communique inviting persons and bodies interested in the subject to send their views on the suggested change to the Commission was issued. A letter was also forwarded to State Governments, High Courts etc. for sending their comments on the suggestion. In the meantime, a draft Report on the subject was also prepared for the consideration of the Commission.

3. The draft Report was tentatively approved, with certain verbal modifications, at the 86th meeting of the Commission held on the 16th and 17th May, 1967, and it was decided that after the comments of the State Governments etc. on the suggestion are received, the draft Report be considered again.

4. At the 87th meeting of the Commission held on the 8th August, 1967, the draft Report was again considered in detail. The comments received from State Governments, High Courts etc. on the suggestion for amendment were discussed. Material regarding the history of section 44 was also considered.

5. The draft Report was finally approved at that meeting and the view embodied therein that no change be made in the law was confirmed. It was also decided that historical material may be added.

(As the suggestion for amendment had been already circulated for comments to State Governments, it was considered unnecessary to circulate the draft Report again for comments to State Governments etc.).

6. The Report was revised accordingly. Material relating to recent alteration of the law in England as to misprision of felony was added in the revised Report. The Appendices were also revised, with reference to provisions imposing obligations (about Reporting of offences) on special classes of persons.

7. Mr. R. P. Mookerjee, Part-time Member has signed the Report subject to a separate note.

8. I wish to express our appreciation of the help given by Mr. P. M. Bakshi in the preparation of this Report.

Yours sincerely,
J. L. KAPUR.

EXPLANATION OF ABBREVIATIONS USED

S. No.—Serial Number in the Law Commission's File

CONTENTS

REPORT ON SECTION 44, CODE OF CRIMINAL PROCEDURE, 1898

Subject-matter of the Report.

1. Section 44 of the Code of Criminal Procedure, 1898, imposes an obligation on every person who is aware of the commission of, or of the intention of any other person, to commit the specified offences, to forthwith give information to the nearest Magistrate or Police Officer of such commission or intention (in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware).

Now, it has been suggested that a provision be inserted in the Code, as section 44A, to require public servants to give information about bribery, etc. It is this suggestion[1] which is the subject-matter of this Report.

Why subject taken up.

2. We have taken up this suggestion[2] separately, in view of its urgency[3].

Suggestion stated.

3. The suggestion[4] thus expresses the change proposed and reasons for it:—

> "From time to time difficulties have been experienced in obtaining information or in securing statements from public servants about corrupt practices which are within their knowledge. While a reluctance on their part to speak about matters which involve them personally can be understood, their apathy and indifference in helping the investigation or enquiry in respect of matters in which they are not involved cannot be appreciated. It has been noticed that even when public servants have knowledge about corrupt practices on the part of other public servants they do not readily give information or evidence. Even when examined as witnesses they sometimes do not make a full and frank statement but suppress certain points. They may not directly tell lies but this suppression of material facts is equally damaging. In order to check this tendency it would be useful to have provisions in law and in rules to make it incumbent on public servants to give full and true information and evidence about corrupt practices within their knowledge.

1Suggestion of the Central Bureau of Investigation, S. No. 1 in Law Commission File No. F. 1 (2)/67-L.C., copied from S. No. 441 in File No. F. 3 (2)/55-L.C. Pt. VII.

2Paragraph 1, *supra*.

3Letters addressed to the Law Commission by the Department concerned desired early action.

4Taken from the original suggestion dated 22nd June, 1965 of the Director, Central Bureau of Investigation, contained in the Ministry of Home Affairs file.

5. (S. No. 2 of Law Commission's File No. F. 1 (2)/67-L.C.).

With a view to achieving this object it is suggested that a provision be made in the Criminal Procedure Code under which a duty may be cast upon public servants to give assistance and information about the commission of offences under sections 161, 162, 163, 164, 165 and 165-A, I.P.C. and under sections 5(2) and 5(3) of Prevention of Corruption Act (Act II of 1947) and also to make it their duty in the course of any enquiry, investigation or trial into any of the above offences to answer truthfully and fully all questions relating to such cases other than questions the answer to which may expose him personally to a criminal charge."

4. The draft amendment proposed in the suggestion[1] is also quoted below:—

> "*Section 44A.* Every public servant aware of the commission of offences under sections 161, 162, 163, 164, 165, 165A, I.P.C., and sections 5(2) and 5(3) of Act II of 1947 shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to an authority competent in law to investigate such offences and shall while giving such information truly disclose all the facts and circumstances of the case within his knowledge.
>
> "And in the course of any enquiry, investigation or trial into any of the above offences, it shall be the duty of every public servant to answer truly and fully all questions relating to such case put to him, other than questions, the answer to which shall have a tendency to expose him to a criminal charge.".

Points made of the suggestion enumerated.

5. Thus, three points have been made in the suggestion[2], pertaining respectively to—

(*i*) duty to give information;

(*ii*) duty to disclose full facts in the investigation; and

(*iii*) duty to disclose full facts in evidence.

The question whether any change in the law is desirable may be considered, with reference to each of these points.

First point—proposal to impose duty to report bribery

6. The first point[3] (proposal to make it incumbent on every public servant to report offences relating to bribery) related to section 44, Code of Criminal Procedure, 1898. That the offence of bribery is a serious one need not be disputed. That the legislature has emphasised its

1 Taken from the original suggestion dated 22nd June, 1965 of the Central Bureau of Investigation contained in the Ministry of Home Affairs file [S. No. 2 of Law Commission's file No. F. 1 (2)/67-L.C].

2 Paragraphs 3 and 4, *supra*.

3 Paragraph 5 (*i*), *supra*.

seriousness is evident from the fact that in recent times special and stringent provisions[1] have been enacted for its prosecution and punishment. If, therefore, by an amendment the offence can be inserted in section 44 (or in a provision similar to section 44 to be put immediately after section 44), and if such amendment is not open to any serious objection, then the proposal for amendment deserves consideration. We, therefore, first proceed to examine whether the proposal fits in with the scheme of section 44.

Analysis of offences specified in s. 44, Code of Criminal Procedure.

7. The offences specified in section 44 of the Code of Criminal Procedure, 1898, seem to lend themselves to a broad classification as follows:—

Sections of the Indian Penal Code referred to in section 44, Code of Criminal Procedure.	Nature of the offence.
Sections 121 to 126, and 130, Indian Penal Code.	Offences against the State.
Sections 143 to 146, and 148, Indian Penal Code.	Offences against public tranquility.
Sections 302 to 304, Indian Penal Code.	Serious offences against the person, causing death.
Section 382, Indian Penal Code (Theft after preparation made for causing death), sections 392 to 399 and 402, Indian Penal Code (Robbery and Dacoity).	Offences against property, evincing a determination to carry out one's object by violent means.
Sections 435 and 436, Indian Penal Code (Mischief by fire), sections 449, 450 and 456 to 460, Indian Penal Code (House-trespass to commit serious offences or offences where death or grievous hurt caused).	

From this classification, it would appear that the offences in respect of which information is required to be given, are either those which create a sense of insecurity or show a malignant heart bent upon mischief—offences which, by their very nature, are such that immediate arrest is necessary to restore the sense of security or to prevent the offender from inflicting further harm. This is true even of the offence under section 382, Indian Penal Code which, though not constituting full-fledged robbery, practically amounts to robbery[2]. Further, the overt acts which constitute most of the offences specified in section 44 of the Code of Criminal Procedure, 1898, are so obvious, that ordinarily it would not be difficult for a layman to determine that an "offence" of the specified category has been committed.

1*See* the Prevention of Corruption Act, 1947 (2 of 1947).

2Section 392, Indian Penal Code.

History of section 44.

8. Some idea of the original object of the section can be obtained from the corresponding section in the 1861 Code, which is quoted below[1]:—

> "138. All persons to give information of offences. It shall be the duty of every person who is aware of the commission of any offence made punishable under section 382, 392, 450, 456, 457, 458, 459, or 460, of the Indian Penal Code, to give information of the same to the nearest Police Officer, whenever he *shall have reason to believe that if such information be withheld, the person who committed the offence may not be brought to justice, or may have his escape facilitated.*"

In the latter half of the section, the words "if such information be withheld the person may not be brought to justice or may have his escape facilitated" seem to show the dominant consideration.

9. This is borne out by the history of the offence in England. As was observed by Lord Denning[2]—

> "Eversince the days of hue and cry, it has been the duty of a man who knows that a felony has been committed to report it to the proper authority so that steps can be taken to apprehend the felon and bring him to justice.".

10. When the Code of 1872 was under consideration offences under sections 302, 303, 304, Indian Penal Code were discussed. The proposal to add these offences seems to have been made after suggestions were received by the Legislative Department. Offences under sections 121 to 126 and 130, Indian Penal Code were also added in 1872. The Select Committee, in its Report dated 12th March, 1872[3], stated:—

> "We have added Murder and offences against the State to the list of offences which it is the duty of the public to report.....".

11. Some of the important comments[4] made in 1872 may be quoted.

(*i*) *Officiating Judicial Commissioner, Oudh*

(Mr. C. Currie, S. No. 251 in the file, para. 31).

> "It is suggested that sections 302, 304, 306, 308, 311, 317, 400 and 401 be added to the list in this section. Mr. Sparks observes that he is not aware on what principle the offences referred to in this

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1Section 138, Code of Criminal Procedure, 1861 (25 of 1861).

2*Sykes*, v. *D. P. P.* (1961) 3 W.L.R. 371, 377 (H.L.).

3Report of the Select Committee dated 12th March, 1872; Proceeding of the Legislative Department regarding the 1872 Code, Appendix P, paragraph 22.

4Legislative Department, Proceedings regarding the 1872 Code, No. 141 to 346 (National Archives).

section have been selected; but in his opinion murder should be one of those offences regarding which any person acquainted with the fact would be bound to give information. I certainly think that sections 302, and 304 should be added; for I do not understand why a person is to be bound to give information of the commission of a theft but not of a murder. The other sections could not in my opinion, be advantageously included.".

(*ii*) Dr. C. D. Field[1], Esq., LL.D. Barrister-at-Law, Officiating Judge of Chittagong, suggested as follows:—

"*Section* 69—I would add to this list sections 302 and 304 of the Penal Code. I would also incorporate the old Bengal Regulations which make it incumbent on Zamindars, etc., to give information in certain cases. See Regulations VI of 1810, I of 1811, III of 1812 and VIII of 1814.....".

(*iii*) Mr. Barkley[2] (paragraph 20 of his letter, quoted by the committee appointed by the Punjab Government to report on the Revised Bill, in its letter dated 25th May, 1871): "Section 69 appears unduly to limit the obligation of members of the general public. For example, murder is not one of the offences enumerated.".

12. Section 44, as it stood in 1882, was as follows:—

Public to give information of certain offences.

"44. Every person, whether within or without the Presidency towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, namely, 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention."

13. By Act 3 of 1894[3], the following amendment was made in sections 44 and 45.

Addition to section 44 of Code of Criminal Procedure, 1882.

'Code of Criminal Procedure, 1882.—1. To section 44 of the Code of Criminal Procedure, 1882, the following shall be added, namely:—

"Any act committed at any place out of British India which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392,

1No. 262 in the Legislative Department Proceedings relating to the 1872 Code.

2Legislative Department Proceedings relating to the 1872 Code, Appendix II.

3The Indian Criminal Law Amendment Act, 1894 (3 of 1894).

393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460, shall be deemed to be an offence for the purposes of this section.".'

Addition to section 45 of same Code.

2. In section 45 of the Code of Criminal Procedure, X of 1882, the following shall be added after clause (d) and substituted for the explanation, namely:— 1882

"(e) the commission of, or intention to commit, at any place out of British India near such village any act, which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.".' XLV of 1860

In this section—

(*i*) "village" includes village-lands; and

(*ii*) the expression "proclaimed offender" includes any person proclaimed as an offender by any Court or authority established or continued by the Governor-General in Council in any part of India in respect of any act, which, if committed in British India, would be punishable under any of the following sections of Indian Penal Code, namely, 302, 304, 382, 392, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460.". XLV of 1860

By Act 10 of 1894[1] the following amendments were made to sections 44 and 45:—

Amendment of section 44, Act X, 1882.

"1. In section 44 of the said Code the figures "143, 144, 145, 147, 148" shall be inserted between the figure "130" and the figure "302".

Amendment of section 45, Act X, 1882 and addition of a section thereafter.

2. (1) For the part of section 45 of the said Code beginning with the words "Every village-headman" and ending with the words "under suspicious circumstances" the following shall be substituted, namely:—

Village-headmen, accountants, land-holders, and others bound to report certain matters.

"45. Every village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen

1The Code of Criminal Procedure, Amendment Act, 1894 (10 of 1894).

property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under section 143, 144, 145, 147, or 148 of the Indian Penal Code; XLV of 1860.

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances;".

(2) In the same section, after clause (*e*), added by section 2 of Act III of 1894, the following shall be inserted, namely:—

"(*f*) any matter likely to affect the maintenance of order or the prevention of crime of the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information."

14. In the Bill of 1897 as introduced, the only change proposed in section 44 was the addition of sub-clause (2), as follows:—

"(2) For the purposes of this section, the term "offence" includes any act which would constitute an offence if committed in British India.'.

In the statement of Objects and Reasons[1] under clause 44, the following reasons were given:—

"*Clause 44*—The new clause is necessary in regard to the giving of information of offences committed or intended to be committed in Native States, especially on the border land of British India.".

15. In the Report of the Select Committee, on the 1897 Bill, this change was maintained (with certain verbal alterations). Clause 44(2) as approved by the Select Committee for the 1897 Bill, stood as follows:—

(2) For the purposes of this section, the term "offence" includes any act *committed at any place out*

1Statement of Objects and Reasons, dated 14th October, 1897.

of British India which would constitute an offence if in British India.'.

In the Code as passed in 1898, section 44(2) was enacted in the form in which it was approved by the Select Committee.

16. It may be of interest to note that clauses 7 and 8(i) and (iv) of the Amendment Bill[1] of 1914 proposed the addition of several offences to section 44 and section 45(I) (e), *including, (in both cases) section 489A to 489D, Indian* Penal Code and offences under Chapter 12, Indian Penal Code (Stamps and Coins), excluding sections 239, 240, 250, 251 and 254, Indian Penal Code. The reasons were thus given:—

"*Clause 7 (section 44)*

It is considered desirable to place upon the public obligation to give information regarding the *more serious* offences relating to coin and government stamps and the counterfeiting, etc., of currency and bank notes."

"*Clause 8 (section 45)*

The second and fourth amendments are similar to those covered by clause 7."

17. The Lowndes Committee (which scrutinised the 1914 Bill) retained these particular amendments[2]. But the Joint Committee which examined the 1921 Bill made these observations on clauses 9 and 10 of the 1921 Bill (pertaining to sections 44 and 45)[3]—

"*Clauses 9 and 10 (sections 44 and 45)*

Some of our non-official members deprecated any extension of the scope of section 44, and on the whole, in view of the fact that prosecutions for contravention of the provisions of the section *are rare*, we thought that the matter was not one of great importance. We have, therefore, deleted clause 9.

We are agreed, however, that the same considerations do not apply to section 45 where the obligation to give information to the police is laid on *a restricted class of persons*, and we *have maintained* the additions made to clause (e) of sub-section (1)....".

1Clauses 7 and 8, Code of Criminal Procedure (amendment) *Bill*, 1914 "Gazette of India", March 28, 1914, Part V, pages 101-102, 119 [Clauses 7 and 8 (1)(*iv*)].

2Report of the Lowndes Committee (23rd December, 1915), Appendix B, Notes on clauses 7 and 8; [Government of India, Legislative Department, Assembly and Council-A Proceedings, October 1923, No. 1—54, (National Archives of India)].

3Report of the Joint Committee (26th June, 1922), Government of India, Legislative Department, Assembly and Council-A, Proceedings, October, 1923, No. 1-54, (National Archives of India).

18. Bribery, in our opinion, does not bear an analogy to the offences specified[1] in section 44. There is no question of a sense of insecurity[2] being created by bribery, or of the public tranquility being disturbed or of violence being employed. The harm, though serious, is not of the same category as that resulting from the offences mentioned in section 44. Moreover, it may be difficult for a layman to satisfy himself fully about the facts and decide whether the act of giving money or other gratification is accompanied by the various circumstances so as to fulfil all the ingredients of the offence as defined in section 161, Indian Penal Code and connected sections.

Bribery whether analogous to offences in section 44, Code of Criminal Procedure.

19. We have also considered the provisions of section 45 of the Code of Criminal Procedure[3], under which village-headmen, accountants, landholders and others are bound to report certain matters. Most of these matters relate to offences affecting the maintenance of order or security,— Offences under sections 460, 489A, 489B, 489C and 489D, Indian Penal Code are also reportable under section 45(1) and under section 45(1)(f), the District Magistrates can require the persons mentioned in the opening sentence, of section 45(1) to communicate information respecting any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property, respecting which the District Magistrate, by general or special order made with the previous sanction of the State Government, has directed him to communicate information. Bribery and corruption do not seem to be analogous to the matters which are specifically mentioned in section 45 or regarding which an order can be made under section 45(1)(f).

Section 45 of the Code considered.

As regards section 45(1)(e), which mentions, *inter alia*, section 489A, Indian Penal Code, etc. (offences relating to currency notes), it should be observed that it applies in respect of the commission of these acts at a place out of India near the village. The overt acts required in offences affecting currency notes would be obvious. A private person can hardly claim that an act of counterfeiting or possession of instruments of counterfeiting, etc., has a lawful purpose.

20. We went through a number of special laws containing provisions[4] analogous to section 44 of the Code of Criminal Procedure, 1898, or otherwise requiring information to be furnished regarding specified matters. Most of these provisions come into play on a demand made by a competent authority (*i.e.* no spontaneous reporting is required). Some are of a special character, and do not

Provisions in special laws.

1Paragraph 7, *supra*.

2Contrast paragraph 7, *supra*, as to murder, etc.

3Section 45, Code of Criminal Procedure, 1898.

4*See* list in Appendix 2. (The list is not intended to be exhaustive).

relate to information in relation to "offences". This leaves us with very few enactments that contain provisions really analogous to section 44 of the Code of Criminal Procedure, and these pertain to arms or explosives,—in other words, to matters affecting security.

21. We also went through a number of laws[1] which impose duties on the police-officers, etc.

Dilemma before the person bound to give information.

22. Another important aspect of the matter should also be borne in mind. When the person concerned is placed under an obligation to report a certain act alleged to be a crime, the law places him in a dilemmatic situation. If he fails to give information, he renders himself liable to punishment[2]. If, on the other hand, he rushes to give the information and ultimately it turns out that the ingredients of the law defining the offence are not fully satisfied, he may be sued for damages for defamation[3], and it may then be a hard task for him to satisfy the court that the statement was protected as made on an occasion of "qualified privilege"[4] (in a civil suit), or to take shelter under the eighth and ninth Exceptions to section 499, Indian Penal Code (in a criminal prosecution)[5].

Qualified privilege.

23. A privileged occasion (in reference to qualified privilege) is an occasion "where the person who makes the communication has an interest or a duty legal, social or moral, to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive it"[6].

24. The classic statement as to an occasion of qualified privilege is that of Parke B.[7] according to whom the defendant is liable for a defamatory publication "unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from unauthorised communications, and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made,

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1*See* list in Appendix 3. (The list is not intended to be exhaustive).

2*See* sections 176 and 202, Indian Penal Code.

3For detailed discussion as to defamation see paragraph 23 *et seq*, *infra*.

4*See* paragraph 23, *infra*.

5For criminal liability, see paragraph 46, *infra*.

6*See* Lord Atkinson's judgment in *Adam* v. *Ward*, (1917) A.C. 309, 334 ; (1916-17), All E.R. Reprint 157, 170.

7*Toogood* v. *Spyring*, (1834), 1 Cr. M. & R. 181, 193, 3 L.J. Ex. 347; 149 E.R. 1044 ; (1824 to 1834), All E.R. Rep. 735, 738, which has been described by Lord Shaw as holding "the leading place" in authority, in *Adam* v. *Ward*, (1917) A.C. 309; (1916-1917) All E.R. Rep. 157, 175 (H.L.).

such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits"[1].

Discussion in a judgment of Scrutton L. J. may also be quoted[2]:—

> "By the law of England there are occasions on which a person may make defamatory statements. These occasions are called privileged occasions. A reason frequently given for this privilege is that the allegation that the speaker has "unlawfully and maliciously published" is displaced by proof that the speaker had either a duty or an interest to publish, such duty or interest conferring the privilege. But communications made on these occasions may lose their privilege. (i) They may exceed the privilege of the occasion by going beyond the limits of the duty or interest, or (ii) they may be published with express malice, so that the occasion is not being legitimately used, but abused".

The Defamation Committee state the legal position thus[3]:—

> 'Speaking very broadly "qualified privilege" at common law exists wherever the person publishing the defamatory statement (whether libel or slander) is under a duty to, or has an interest in, publishing it, and each person to whom it is published has a corresponding duty or interest in *receiving* it. In the course of the evidence submitted to us, little or no criticism has been directed towards this branch of the law of defamation—which is of vital importance to all members of the community and we do not recommend any change.'

English case as to qualified privilege.

27. We may refer to the judgment of Willes J.[4] in one case. An action was brought against the Queen's printer for damages for publication of certain defamatory statements contained in a minute prepared by the First Lord of the Admiralty for presentation to the Parliament during the ensuing session, printed by the defendant. The privilege relating to matters in which the speaker or writer and the person addressed have had a duty or interest in common was considered, and the following examples cited:—

> "Of this class are cases of characters given to servants, either in dismissing them,[5-6-7]—or in advising

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1Generally as to qualified privilege, see Halsbury, 3rd Edn., Vol. 24, pages 54, 56, paragraphs 97 to 100.

2*Watt* v. *Longsdon*, (1930) 1 K.B. 130 ; (1929) All E.R. Reprint 284, 287-288.

3Report of the Committee on Defamation (Porter Committee) (1948): Cmd. 7536, paragraph 96.

4*Henwood* v. *Harrison*, (1872) Law Reports 7 C.P. 606, 620, 621, 622.

5*Taylor* v. *Hawkins*, 16 Q.B. 308 ; 20 L.J. (Q.B.) 313.

6*Somerville* v. *Hawkins*, 10 C.B. 583 ; 20 L.J. (C.P.) 131.

7*Manby* v. *Witt*, 18 C.B. 544 ; 25 L.J. (C.P.) 294.

others not to employ them, even though the advice be not asked for[1-2]; of advice given to another, as to the character of a person with whom marriage was contemplated[3]; of information that a robbery had taken place; of a handbill offering a reward for the recovery of bills[4] of exchange, stating that they were suspected of being embezzled by the plaintiff, such handbill being published for the protection of the person liable on the bills, or to secure the conviction of the offender[5]; of complaints to public officers of the conduct of persons in their employment[6-7]; of fair criticism of literary or other works[8-9]; of places of public resort[10]; or of the persons who perform there[11]; or of other proceedings of a character in which the public have an interest[12].

The principle upon which these cases are founded is a universal one, that the public convenience is to be preferred to private interests, and that communications which the interests of society require to be unfettered may freely be made by persons acting honestly without actual malice, notwithstanding that they involve relevant comments condemnatory of individuals.

In a popular work on defamation[13] the position has been thus stated:—

> "A person is not only entitled, but is under a duty, to report to the police what he knows, if he has reason to believe that a felony has been committed. Such a report would be protected by qualified privilege because the person making it had a duty to do so, and the persons to whom it was made—namely the police officials—had an interest in receiving it. But the position would be quite different if, instead of making the report to the police, he made it to the local newspaper, which would have no interest which the law would recognize in receiving it."

1*Pattison* v. *Jones*, 8 B. & C. 578 per Bayley J.

2*Gardner* v. *Slade*, 13 Q.B. 796 ; 18 L.J. (Q.B.) 334.

3*Todd* v. *Hawkins*, 8 C. & P. 88 (per Alderson B.).

4*Kine* v. *Sewell*, 3 M. & W., 297.

5*Finden* v. *Westlake*, M. & M. 461, per Tindal C. J.

6*Blake* v. *Pilfold*, 1 M. & Rob. 198, per Taunton J.

7*Woodward* v. *Lander*, 6 C. & P. 548, per Alderson, B.

8*Tabart* v. *Tipper*, 1 Camp, 350, per Lord Ellenborough.

9*Fryer* v. *Kinnersley*, 15 C.N. (N.S.) 422; 33 L.J. (C.P.) 96.

10 *Dibbin* v. *Swan*, 1 Esp. 28, per Lord Kenyon.

11*Gregary* v. *Duke of Burnswick*, 1 Car. & K. 24, per Tindal C.J.

12*Dunne* v. *Anderson*, R. & M. 267 ; 3 Bing. 88, per Best, C.L.

13Hickson and Carter-Ruck, Law of Libel and Slander, (1953), page 147.

28. The argument of Sir Valentine Holmes K. C. in a Privy Council case[1] gives an outline of the evolution of the defence of qualified privilege in English law. History of qualified privilege.

29. In a Privy Council case[2], the English decisions, including *Toogood* v. *Spyring*[3], and *Adam* v. *Ward*[4] were referred to as laying down the correct rule. Indian decisions as to qualified privilege,

The Indian decisions as to qualified privilege and civil liability are reviewed in a Patna case[5], which also refers to the English decisions[6]. The position in India, as regards privileged occasions in relation to civil liability, is not substantially different from England.

It may be added, that a statement made to a police-officer in the course of an investigation may not be absolutely privileged, in India.

30. We may now specifically discuss privilege under the head of legal duty[7]. The question of legal duty was considered in an English case[8]. Section 228 of the Merchant Shipping Act, 1894, imposes a statutory duty upon the master of a ship to make certain entries in the log, and in any case where the master leaves a man behind, he must state in the log whether the cause of leaving him behind is desertion or inability to proceed to sea or disappearance. The master made an entry that the plaintiff had deserted the ship. The plaintiff sued the shipping company, *inter alia*, for damages for libel. It was held, that the words were written and published on a privileged occasion, and before the plaintiff could succeed, he must prove that the master was, in fact, acting maliciously. Legal duty

31. As to examples of legal duty, the[9-10-11-12-13] undermentioned decisions may be seen. Indian cases as to legal duty.

Reports made in pursuance of legal duty, although defamatory, are *prima facie* justifiable, and the duty of

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1*Pereira* v. *Peiris*, (1949) A.C. 1, 9, 10 ; A.I.R. 1949 P. C. 106.

2*Govind Das* v. *Bishambar Das*, (1917) I.L.R. 39 All. 561, 571 (P.C.)

3*Toogood* v. *Spyring*, paragraph 24, *supra*.

4*Adam* v. *Ward*, paragraph 24, *supra*, (footnote).

5*Surendra Nath* v. *Bageshwari Prasad*, A.I.R. 1961 Pat. 164.

6*Cf. Maroti* v. *Godubai*, A.I.R. 1959 Bom. 443 (DatarJ.) (Reviews case law).

7Paragraph 24, *Supra*.

8*Moore* v. *Canadian Pacific Steamship Co.*, (1945). All England Reports 128, 133 (Lynskey J.)DS.

9*Narasimmah* v. *Balwant* (1903) I.L.R.27 Bom. 585, 588 (Chandavarkar J.). (Duty of police officer).

10*Govindan Nair* v. *Achutha Menon* (1915) I.L.R 39 Mad. 433 (Official duty)

11*Govind Das* v. *Bishambhbar Das*, (1917) 44 I.A. 192; I.L.R. 39 All 561 (P.C). (Duty) as Chairman of a community Panchayat

12*Megha Deva* v. *Karchand* , A.I.R. 1955 Saurashtra 110.

13*Subedar* v. *Jagat* (1924) I.L.R. 46 All 772.

14*Prem Narain* v. *Jagdamba Sahai*, (1925) I.L.R. 47 All 859 (Public duty of member of municipal board).

making them reverses the malice which the *Law* implies, and renders proof of actual malice, *i.e.*, of some "wrong and improper motive", necessary to the maintenance of an action[1].

Information given to police.

32. Information given to the police to check crime is, no doubt, privileged[2]. (The privilege is a qualified one[3]).

Statements in aid of justice.

33. The protection under the head of statements in aid of justice is also relevant. It is thus stated in Gately[4]: "It is the public duty of everyone who knows, or reasonably believes, that a crime has been committed to assist in the discovery of the wrongdoer. Any complaint made, or information given, for that purpose to the police, or to those interested in investigating the matter, will, in the interests of society, be privileged and the mere fact that the defendant volunteered the information will make no difference".

The statement must be made to the proper authorities[5], and with the honest desire of promoting investigation into the alleged crime[6].

> "A man is but a poor citizen, to say nothing worse of him, if he is deliberately silent when he sees the lives of the public likely to be imperilled or the property of another person in obvious danger of being stolen or destroyed by one whom he honestly believes to be a drunkard or a thief".[7]

Statements regarding suspected crime.

34. Provided the statement is made to the proper authority and *bona fide*, and not for an improper motive, a statement concerning a suspected crime enjoys privilege even though the suspicion turns out to be erroneous.[8-9].

Statements as to misconduct of public servant.

35. Generally also, a statement as to the misconduct of a public servant made to the proper authority does enjoy qualified privilege.[10-11-12].

1*Hart* v. *Gunpach* (1872) L.R. 4 P.C. 439, referred to by Tyabji J. in *Goviandan Nair* v. *Achutha Menon*, (1915) I.L.R. 39 Mad. 433, 445.

2Padmvre v. Lawrence, (1840) II Ad and EI 380 ; see Gatley on Libel and Slander (1960), page 212, f.n. 22. For facts of the case, see *ibid*, page 215, f.n. 46.

3*See* Gatley, page 213.

4Gatley, Libel and Slander, (1960), page 210, paragraph 363

5Gatley, Liblel and Slander, (1960), page 210, paragraph 363.

6Gately, Libel and Slander, 1960, page 212, paragraph 367.

7*See* Winfield on Tort, (1963), page 638.

8Gatley on Libel and Slander, (1960), pages 210-211, paragraph 363

9*See* cases in Gatley, Libel and Slander,(1960), pages 212-213, paragraph 369 ; footnotes 23 to 26.

10Gatley on Libel and Slander, (1960), page 216, paragraph 374.

11*Jenoure* v. *D. elmege*, (1891) A.C. 73.

12*Jusab. Morrsision* (1912) 15 Bom. L.R. 249.

36. The difficulty, however, which we have in mind is not, that the suit for defamation will ultimately succeed,—which perhaps it may not,—but that the suit will be filed and the informant will have to undergo the terror of that suit. Difficulty to be considered.

37. We may, in this connection, quote from Mr. Justice Slade's view expressed extra-judicially.[1] Mr. Justice Slade's view.

> "I doubt whether it would be an exaggeration to say that the risk of becoming involved in proceedings for defamation is almost as great as that of becoming involved in an action for negligence following a road accident.

38. It should be made clear, that we are not thinking of a totally *false story*[2] or of a totally true story. We are thinking of a case where some of the ingredients of bribery are established, but not all. This is a material consideration, because it is not enough that the person reporting an "offence" *bona fide* thinks that he is discharging a duty[3]. Partly true cases.

39. The practical difficulty[4] arises because two duties come into play,—the duty to report crime, and the duty not to malign one's neighbour. Conflict between duty to report and duty not to malign one's neighbour.

40. The point is, that the informant should not be forced to make the delicate choice of deciding (i) whether he should take the risk of being sued in defamation (by reporting a suspected case of bribery, in order to avoid a prosecution under sections 176 and 202, Indian Penal Code), or (ii) whether he should take the risk of remaining silent and incur the consequential risk of a prosecution (by not reporting in order to avoid a suit for damages for defamation). Delicate choice not to be forced on informant.

41. As to the present legal position, the following observations of Creswell J.[5] may be referred to in this context. Present legal position.

> "It may be said that it is very hard on a defendant to be subject to heavy damages (for libel) where he has acted honestly, and where nothing more can be imputed to him than an error in judgment. It may be hard; but it is very hard, on the other hand, to be falsely accused. It is to be borne in mind that people are but too apt rashly to think ill of others; the propensity of tale-bearing and slander is so strong amongst

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1Foreword by Mr. Justice Slade to Hickson and Carter Ruck, Law of Libel and Slander, (1953).

2*Cf. Sham Lal* v. *Abdul Raof*, I.L.R. 57 All. 935 ; A.I.R. 1935 All. 538, 541 (F.B.).

3*Cf. Stuart* v. *Bell* (1891) 2 Q.B. 341, 349 (C.A.) (Judgment of Lindley L. J.).

4*Paragraph* 36, *supra*.

5*Coxhead* v. *Richards*, (1846) 2 C.P. 569, 601 ; 135 E.R. 1069, 10 82.

mankind, and, when suspicions are infused, men are so apt to entertain them without due examination, in cases where their interests are concerned, that it is necessary to hold the rule strictly as to any officious intermeddling by which the character of others is affected.".

And, as was observed by Tindal C. J. in the same case[1], if the defendant took a course which was not justifiable in point of law although it proceeded from an error in judgment only, (and not an error of intention), still it is undoubtedly he, and not the plaintiff, who must suffer for such error.

No protection for wrong assumption.

42. As was observed by the House of Lords[2] no protection can be afforded to a person who wrongly assumes the facts which constitute a privileged occasion.

Privilege for first information report.

43. There is, we note, a conflict of decisions on the question whether a statement made by way of First Information Report[3] possesses qualified privilege[4-5], or whether the privilege is absolute on the ground that it is a step towards a judicial proceeding[6-7].

44. The position in England was thus stated by Blagden J. in a very exhaustive judgment[8].

'A would-be institutor of criminal proceedings in England could, till the recent abolition of Grand Juries, take any one of at least three courses. If his charge was one of an indictable offence he could prefer a voluntary bill of indictment to the grand jury at the Assize or Quarter Sessions for his county, or borough (he must now prefer it to the presiding Judge or Recorder); or whatever the offence charged, he could lay information before a Magistrate; or he could complain to the police. Against proceedings for defamation either of the first two courses afforded him complete and absolute protection but he was exposed to the risk of an action for malicious prosecution if the prosecution failed. The third course freed him from that risk, unless indeed he made the police his agents by saying, in effect, "I wish you to prosecute whatever you think about it" instead of "I wish you to look into the matter and prosecute 'if you think fit'".

1*Coxhead* v. *Richards*, (1846); 2 C.P. 569, 596 135 E.R. 1069, 1080.

2*Baird* v. *Wallace James*, (1916) 85 L.J. P.C. 193, 197.

3Section 154, Code of Criminal Procedure, 1898.

4*Mojju* v. *Lachman Prasad*, I.L.R. 46 All. 671 ; A.I.R. 1924 All. 435 (F.B.).

5*Balammal* v. *Pataudi-Naidu*, A.I.R. 1938 Mad. 164 (D.B.).

6*Bira Gareri* v. *Dulhin Somaria*, A.I.R. 1962 Pat. 229, 223, paragraph 6 (Ramaswami C. J. and Untawalia J.).

7*See* also paragraphs 28-29, *supra*.

8*Mayr* v. *Rivaz*, I.L.R. (1943) 1 Cal. 250, 265, (Blagden J.).

It was, therefore, not unreasonable that, if he took the *third course*, he should be open to a *suit for defamation*. In any case, if he acted honestly, he had nothing to fear beyond the annoyance of a law-suit which he could successfully defend: But since the law from the earliest times permitted suits for malicious prosecution it has clearly never been its policy to stifle enquiry into the motives of prosecutors as such, still less those of would-be prosecutors.'.

45. We do not elaborate this point. Whichever view is correct, the difficulty which we have in mind[1]—the prospect of the institution of a suit—is not eliminated.

Position at criminal law.

46. We have so far[2] dealt with civil liability for defamation. The position is no better at criminal law. The offence of defamation, as defined in section 499, Indian Penal Code, is subject to certain exceptions, and the exception that appears to be the most relevant for the present purpose is the Eighth Exception, which runs as follows[3]: —

"*Eighth Exception*: It is not defamation to prefer, in good faith, an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation".

The two ingredients are, first, accusation in good faith, and secondly, preferring it to a person having lawful authority.

If the imputation is true and its publication is for the public good, then, of course the First Exception to section 499, Indian Penal Code applies. In some cases, the General Exception as to legality[4] may apply—for example, if the offence of *bribery* has *in fact* been committed, and its reporting is made obligatory as proposed.

Trouble, however, is likely to arise where a person, believing that an offence has been committed which falls under bribery, gives information to the authorities concerned, and it turns out that the offence had not been committed, because of the non-satisfaction of some of the ingredients of the offence. The belief of the informant in such cases may be honest; but it may not be without sufficient cause. Since the Eighth Exception to section 499 requires, *inter alia*, "good faith", and since the definition of "good faith" in the Indian Penal Code[5], requires due care and attention, it is obvious that there is no protection in the absence of a reasonable ground for the informant's belief. The degree of care requisite will carry with the

1Paragraph 36, *supra*.

2Paragraphs 23 to 43, *supra*.

3Section 499, Eighth Exception, Indian Penal Code.

4Section 76, Indian Penal Code.

5Section 52, Indian Penal Code.

degree of danger which may result from the want of care. "Where the peril is the greatest, the greatest caution is necessary."[1]

Good faith under Indian Penal Code.

47. So for as the definition of "good faith" in the General Clauses Act is concerned[2], it suffices if a person has acted under an honest belief. But, section 52 of the Indian Penal Code places emphasis *on due* care and attention.[3]

Decisions under S. 499, Indian Penal Code.

48. The decisions specifically under section 499, Indian Penal Code also make this amply clear[4-5]. The Eighth Exception, to that section at least, requires that, having regard to the facts and circumstances within the informant's knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusion[6]. The good name and reputation of a person are not placed at the mercy of the credulity or indifference of a negligent reporter[7].

49. We cannot, in this connection, do better than quote the observations of Straight J. *in Queen Empress* v. *Dhum Singh*[8].

> 'Under Exception an accusation preferred in good faith to one person, who has authority over another in respect of the subject-matter of that accusation, is not defamation. It will be observed that two ingredients are essential to the establishing of this protection—(i) that the accusation must be made to a person in authority over the party accused; and (ii) that the accusation must be preferred in good faith—that is to say, with such reasonable care and attention on the part of the person making it, in first statisfying himself of the truth and justice of his charge, as an ordinary man should be expected to exercise. I am not at liberty to resort in the present case to the provisions of section 27 of Act 18 1862[9], which enacts that "in proving the existence of circumstances as a defence under the 2nd,

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1Morgan and Macpherson, cited in Ratan Lal, Law of Crimes, (1966) page 88.

2*Cf.* Section 90, Bills of Exchange Act, 1882 (45 and 46 Vict. c. 18) founded on *Jones* v. *Gorden*, (1877) 2 A.C. 616.

3*Harbhajan Singh* v. *State*, A.I.R. 1966 S.C. 97,103, paragraph 19.

4*See Arnold* v. *K. E.*, I.L.R. 41 Cal. 1023 ; A.I.R. 1914 P.C. 116, 119.

5The decisions are collected in Ratan Lal, Law of Crimes (1966), page 1343.

6*Cf. Abdul Hakim* v. *Tej Chander*, (1881), I.L.R. 3 All. 816, 818 (Straight J.).

7*See* case-law reviewed in *R. Sankar* v. *State*, I.L.R. 1959 Ker. 1951; A.I.R. 1959 Ker. 100.

8*Queen Empress* v. *Dhum Singh*, (1884) I.L.R. 6 All 220, 222 (per Straight J.).

9The reference seems to be to the Act dealing with Criminal Procedure of the Supreme Court (Act 18 of 1862), repealed by Act 10 of 1882.

3rd, 5th, 6th, 7th, 9th or 10th exceptions to section 499 of the Penal Code, good faith shall be presumed, unless the contrary appears", as that Act is not in operation here[1]. On the contrary, I can only look to section 105 of the Evidence Act, which throws upon the appellant the burden of proving the existence of circumstances bringing the case within Exception 8, and directs the Court *prima facie* to presume "the absence of such circumstances".'.

50. It is not possible for the court to engraft an exception derived from the common law of England or based upon public policy. In a Calcutta case[2], Mookerjee, Acting Chief Justice, has discussed the case-law and history of section 499 and the various decisions thereunder, and emphatically stated that the court cannot engraft exceptions derived from the common law of England or based on public policy. In view of the plain language of the Eighth and Ninth Exceptions, it was pointed out that absolute privilege could not be claimed under those Exceptions.

51. The proper point to be decided under the Eighth Exception to section 499, Indian Penal Code is not whether the allegations put forth by the accused (alleged to be defamatory) are, in substance, true, but whether he was informed and had good reason *after due care and attention* to believe that such allegations were true.

52. Difficulties do arise in practice in determining whether the accused had reasonable cause to believe[3].

> "Due care and attention implies a genuine effort to reach the truth and not the ready acceptance on ill-natured belief."[4] An honest blunderer can never act in "good faith" within the meaning of the Indian Penal Code, if he is negligent[5-6].

53. If the reporting of the crime (in the absence of a legal duty) is to be justified on the basis of *moral* or social duty, the task is far more troublesome. The judge has "no evidence as to the view the community takes of moral or social duties"[7], and he has to decide it as best as he can. Moral duty.

1As to the law in Presidency towns before 1882, see *Shibo Prasad Pandah* (1879), I.L.R. 4 Cal. 124, 130 (Prinsep J.).

2*Satish Chandra* v. *Ram Doyal De*, (1920) I.L.R. 48 Calcutta 388 ; A.I.R. 1921 Cal. 1 (S.B.).

3*See* for example, *Romesh Roy* v. *The King*, A.I.R. 1952 Cal. 228, 230, paragraph 6 (complaint of prostitution made by the accused in a petition which he signed on the strength of signatures on the petition made by 40 other persons held protected, reversing the judgment of the lower court).

4*Gannpathia Pillai, in re*, A.I.R. 1953 Mad. 936, 937, paragraph 5 (Ramaswami J.).

5*Ganapathia Pillai, in re*, A.I.R. 1953 Mad. 936, 937, paragraph 5.

6*Superintendent and Remembrancer of Legal Affairs* v. *Purna Chandra*, A.I.R. 1924 Cal. 611, 614 (Ninth Exception).

7*See Watt* v. *Longsdon*, (1930) 1 K.B. 130, (1920) All. E.R. Rep. 284, 288 (Reviews case law).

Need for confining section 44, Code of Criminal Procedure within certain limits.

54. Finally, the need for confining provisions in the nature of section 44, Code of Criminal Procedure, within certain limits should not be lost sight of. We cannot, in this connection, do better than to quote the observations of the Criminal Law Commissioners[1]: —

Observations of Criminal Law Commissioners.

> "To require everyone, without distinction, as to the nature and degree of the offence, to become an accuser, would be productive of inconvenience in exposing numbers to penal prosecutions, multiplying criminal charges, and encouraging private dissension. It may sometimes be more convenient that offences should be passed over, than that all should indiscriminately be made the subject of prosecution; and a law would be considered to be harsh and impolitic, if not unjust, which compelled every party injured by a criminal act, and, still more so, to compel everyone who happened to know that another had been so injured, to make a public disclosure of the circumstances. Here, therefore, there is reason for limiting the law against mere misprisions to the concealment of such crimes as are of an aggravated complexion."

A very wide provision would tend to become what was described by the Court of Appeal (though in a slightly different context) as "a mere charter for gossip".[2]

Considerations outlined above to be borne in mind.

55. The proposition that the public interest must be safeguarded and a sense of urgency created in the minds of public servants to treat corruption as a social evil, need not be disputed. But, before giving legislative effect to this proposition in the manner suggested[3], regard must be had to the various legal and practical considerations that we have outlined[4].

Whether practical benefit likely to accrue.

56. Notwithstanding these objections[5], the proposal to add the offence of bribery and corruption would still deserve consideration, if there were counterbalancing considerations, such as a substantial advantage to be gained in practice. We are not sure, however, whether the obligation proposed to be imposed would actually be enforced in practice[6].

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1 Fifth Report of the Criminal Law Commissioners (1840), Parliamentary Papers XX 36, cited in Glanville Williams, Criminal Law, the General part, (1961), page 423, paragraph 141.

2 *See Greenlands* v. *Wilmshurst*, (1913), 3 K.B. 507, 541 (C.A.) (per Hamilton L.J.).

3 Paragraphs 3 and 4, *supra*.

4 Paragraphs 6—54, *supra*.

5 Paragraph 55, *supra*.

6 *Cf.* the observations in *Ram Balak Singh* v. the *State*, A.I.R. 1964 Page 62, 65, paragraph 13 "I wonder why the police authorities do not take appropriate action against persons who fail to give information of a crime as required under section 44 of the Code of Criminal Procedure." (Anant Singh J.).

57. The second point in the suggestion[1] relates to the disclosure of facts in statements made in investigation in respect of offences connected with bribery. This seems to relate to section 161(2), Code of Criminal Procedure, 1898[2]. We do not think that there is any need to amend section 161(2) specially for cases relating to corruption. Second point —disclosure in investigation.

58. The third point made in the suggestion[3] relates to the stage of evidence in respect of offences connected with bribery. It is stated (in the suggestion) that the witnesses (*i.e.* the public servants who know of the act of corruption) do not tell direct lies, but suppress material facts[4]. Now, once the case reaches the trial stage, and the necessary questions are put on behalf of the prosecution, the witness is bound to answer all questions to the best of his information and belief (except questions relating to a privileged matter). Deliberate suppression of facts may or may not amount to "making a statement" within section 191, Indian Penal Code read with the first Explanation to that section[5]. Occasionally, one comes across observations which suggest that it may amount to perjury. Third point —disclosure in evidence.

59. Thus, the following observations occur in a judgment on a writ petition under article 226[6]:— Failure state the whole truth.

> "These facts were suppressed in the counter-affidavit filed by Sri Ram Yash Varma and the affidavit filed by him is thus a document with only half-truths. A witness *perjures* himself not only when he does not state the truth, but also when he states something which is not the whole truth.".

It is necessary for the present purpose to discuss in detail how for the existing law under section 191, Indian Penal Code, is accurately stated in the observations quoted

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1Paragraph 3, *supra*.

2Section 161, Code of Criminal Procedure, 1898 reads as follows :—

"161. *Examination of witnesses by Police.*—(1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.".

3Paragraph 5, *supra*.

4Paragraph 3, *supra*.

5Section 191, Indian Penal Code, deals with perjury.

6*Narottam Singh* v. *State* of U. P., (1963) 7 Factories and Labour Reports, 30, 38. (Allahabad) (S.D. Singh J.).

above, which were not made with reference to any criminal trial.

Disclosure of every minute detail whether to be required.

60. But, if it is intended that the witness must at his peril disclose every minute detail whether a question was put to him or not, then we think that it would be placing too heavy a burden upon the witness. A witness cannot be burdened with the responsibility of *voluntarily* disclosing all the facts in the evidence. The duty of eliciting facts from a witness for the prosecution lies on the counsel for the prosecution. If the investigation has been carried out properly, the police records should show what a particular witness knows and what he is expected to depose in the court. And if the examination-in-chief is done competently, it should not be very difficult to bring out the material facts.

61. We should also like to point out, that before a prosecution under section 191, Indian Penal Code, can succeed, the false "statement" alleged to have been made must be set out with precision in the charge. Merely saying that the accused "gave false evidence" is not enough. The prosecution cannot go on such a vague charge[1].

62. A Phear J. remarked in a case[2]; "Of all criminal charges which can be made, perhaps the charge of perjury is that which the ends of justice require to be the most carefully and accurately worded. The more general is the allegation of falsehood, the less is the risk in putting it forward, and the greater the difficulty of rebutting it. It is, therefore, the right of the person accused of perjury to have the statement which he is charged with having falsely made distinctly and separately pointed out to him, and I will venture to say that no Court can safely and satisfactorily arrive at a judicial conclusion relative to a charge of perjury, unless its investigation be directed singly to each alleged false statement, with the view to ascertaining *first*, whether it was made at all; *secondly*, whether, if made, it was true or untrue; and *thirdly*, whether, if untrue, its untruth was present to the mind of the person making it at the time he made it.".

63. In this connection, we might also refer to the decision under section 202. Indian Penal Code to the effect that the "omission" under section 202 must be intentional[3]

1*Cf. Hira Singh Ojha* v. *Emp.*, (1905) 10 C.W.N. 1099, 1100.

2*Queen* v. *Koli Chum Lahoree* (1868), W.R. Cr. 549 (Phear J.).

3*Udai Chand Mookhopadhyaya* 18 W. R. (Criminal) 31 ; 9 Beng L.R. (Appendix) 31, 33 (Kemp J.).

Analysis comments received.

64. We had circulated the proposal of the Central Bureau of Investigation for comments to State Governments and High Courts. We had also issued a Press Communique inviting any person or body interested to offer comments on the proposed amendment. The replies which we received may be classified under four heads:—

(*a*) Replies stating that they had no comments;

(*b*) Replies in favour of the amendment;

(c) Replies favouring the amendment partially, or with some qualification on modification;

(*d*) Replies opposed to the amendment.

65. Several replies state that they have no comments[1]. It may be stated that many High Courts[2] fall under this category.

66. Some replies are in favour of the amendment[3-4-5-6].

67. Some of the replies approve of the amendment only partially, or subject to certain qualifications or modifications. Thus, one High Court would like to exclude judicial officers from the proposed provision as, in its view, judicial officers should not be placed in the position of an informant.

The High Court has stated that this may result in a Judge becoming a witness in or even a party to a criminal prosecution. This is wholly undesirable from the point of view of the independence of the judiciary.

Further, that High Court[7] has suggested that the provision should make it clear that a public servant is said to be aware of the commission of an offence when he has personal knowledge of the commission of an offence but not otherwise. In the reply of some of the Judges of another High Court[8], it has been emphasised that mere hearsay information should not impose any such duty.

68. Two Judges of a High Court[9] are in favour of the amendment, provided the Government is able to ensure that the public officers will not be victimised for making disclosures against theiir superior officers.

1S. No. 31 (A State Government).

2S. No. 7 ; S. No. 38 ; S. No. 42; S. No. 44 (High Courts) ; S. No. 40 (Some Judges of a High Court).

3S. No. 32 and 35 (High Courts) ; S. No. 40 (One Judge of a High Court) ; S. No. 55 (Some Judges of a High Court).

4S. Nos. 33, 36, 45 and 51 (Administrations of Union Territories).

5S. Nos. 41, 43 (State Governments).

6S. No. 30 and 50 (Private bodies).

7S. No. 52 (A High Court).

8S. No. 55 (Some Judges of a High Court).

9S. No. 39 (Two Judges of a High C.

69. Some replies state[1-2] that every member of the public should be under the proposed obligation.

70. Some replies are totally opposed to the proposed amendment. Thus, the majority of the Judges of a High Court[3] are opposed to it, as they think that it would serve no useful purpose. The Administration of a Union Territory[4] is opposed to the amendment.

One Judge of a High Court[5], while not in favour of expressing any opinion until the proposed amendment is actually put in the form of a draft, has stated that the implication of this amendment is very serious.

71. The view of the Judge of a High Court (shared by three other Judges of that High Court) may be quoted[6]:—

> 'The object of the proposed amendment is, no doubt, laudable, but it has been drafted in too wide terms. It will not be practicable for every public servant to report about every commission of the offences in question of which the public servant may become aware. For example, if the commission of such an offence by a Railway servant comes to the notice of a public servant in course of a Railway journey, he will have to incur a grave risk of being himself prosecuted for giving false information, if he makes a report about such offences and the other passengers or the persons who paid the illegal gratification do not co-operate with him for some reason or other.
>
> I, therefore, suggest that the words "who in course of the discharge of his duties as public servant becomes" should be added after the words "every public servant" and before the word "aware" in the first line of the draft of the proposed amendment.'.

72. In the reply of a State Government[7], which is opposed to the proposal, the following points are made:—

> "The proposed section 44A seeks to make it a legal duty of public servants to give information about offences of bribery and corruption committed by other public servants. Such a legislation is unnecessary and ineffective because mere enactments cannot induce a public servant to give information or evidence against his fellow employees. Generally, public servants are reluctant to give such information for various reasons. A public servant aware of an offence of bribery or

1S. No. 34 (Three Judges of a High Court).

2S. No. 40 (Some Judges of a High Court).

3S. No. 39 (Majority of the Judges of a High Court).

4S. No. 49 (Administration of a Union Territory).

5S. No. 55 (One Judge of a High Court).

6S. No. 55 (Some Judges of a High Court).

7S. No. 57 (A State Government).

corruption may himself have shared the benefit derived from the offence. When he is not connected with that particular offence, he may be involved in some other cases which may be known to other public servants guilty in some particular cases. The result will be that he will not dare to go against other public servants for fear of his own exposure by others. There are some other public servants who are honest but yet do not like to brand themselves as informers by giving information against their colleagues. Besides, a public servant will not be enthusiastic to give any information when the offender happens to be a public servant of some importance and position because his experience has shown that such an offender ultimately manages to get the cases against him dropped".

In the same reply[1], it has been stated:—

"The proposed provision is not only unnecessary and ineffective; it will produce most undesirable consequences because the public servants will suspect one another as a potential informer against them".

73. In the reply of another State Government[2], it has been stated—

"This Government also had occasion to examine the the power regarding enquiries and investigations into cases of corruption at different stages. There was no occasion to feel that the enquiry or the investigation was at any time hampered by the lack of co-operation from public servants. No instance of any unwillingness on the part of any public servant to co-operate with the investigating agencies by furnishing any information regarding any corrupt practices to the investigating agencies has come to the notice of this Government. In view of this, in the opinion of this Government the proposed addition to section 44 of the Criminal Procedure Code may not be necessary as it is felt that such an amendment *may cause embarrassment to public servants and might give occasion for harassment*".

74. The wide difference of opinion revealed in these comments[3] would also seem to justify a cautious approach in the matter.

75. In view of what is stated in the preceding discussion,[4] we do not recommend the adoption of the suggested change[5]. Conclusion.

1S. No. 57 (A State Government).

2S. No. 60 (A State Government).

3Paragraphs 64 to 73, *supra*.

4Paragraphs 6 to 74, *supra*.

5Paragraph 3, *supra*.

Appendices.

76. The Appendices to this Report contain—

(1) a discussion of the English law as to misprision of treason or felony (corresponding to the offence under sections 176 and 202, Indian Penal Code, read with section 44 of the Code of Criminal Procedure, 1898);

(2) a list of provisions analogous to section 44, Code of Criminal Procedure, 1898, or section 176 of the Indian Penal Code, and

(3) a list of provisions analogous to section 45 of the Code of Criminal Procedure, 1898, in some laws relating to police and forests.

1. *J. L. KAPUR—Chairman.*

Members.

2. K. G. DATAR

3. S. S. DULAT

4. T. K. TOPE

5. RAMA PRASAD MOOKERJEE[1]

P. M. BAKSHI
Joint Secretary and Legislative Counsel.

NEW DELHI;
The 30th September, 1967.

APPENDIX 1

ENGLISH LAW AS TO MISPRISION OF TREASON AND FELONY

(a) *Position at common law.*—Section 44 of the Code of Criminal Procedure, 1898, corresponds to the offence of "misprision of treason" and "misprision of felony" known to English law. The gist of the offence (at common law) is concealment of a treason or felony. The former is punishable with imprisonment for life and forfeiture; the latter with imprisonment and fine[2]. The offence was discussed in detail in a recent decision of the House of Lords[3].

At common law misprision of felony is now employed (in connection with treason and felony) to denote the position when a person who knows that a treason or felony has been committed and is in possession of information which leads to the apprehension of the offender, omits to commu-

1Shri Mookerjee has signed the Report subject to the note appended.

2Kenny, Criminal Law (1962), pages 392-393.

3*Sykes* v. *D. P. P.*, (1961) 3 W.L.R. 371 ; (1962) A.C. 528; (1961) 3 England Reports 33, (H.L.) affirming (1961) 1 All England Reports 702.

nicate that information to some appropriate police authorities, and thus to discharge the duty resting upon all citizens to maintain the law of the land[1].

It may be noted, that bribery is not a felony, but a misdemeanour, at common law[2-3].

(b) *History.*—About the history of the offence[4], Stephen has stated as follows:—

> "In concluding this account of our own law, I may just mention the practically obsolete offence of misprision which meant concealment of either treason or felony without otherwise taking part in it. On this I have only to refer to articles 156 and 157 of my Digest. I may add to what is there said that the commonest form of misprision of felony was forbearing to prosecute in consideration of the return of stolen goods, which was anciently called theftbote."

For further details of the history of the offence, the undermentioned articles may be seen[5-6].

Before 1961, there was some authority in England for extending the scope of this offence to include the case of one who knew that a treason or a felony was planned, but not carried out[7]. In a House of Lords case decided in 1961[8], no final opinion was expressed on this point.

In a case[9] decided after Sykes, the question whether misprision might be committed by a passive concealment has been discussed[10]. But the facts of the case were peculiar, as the matter was put in the trial court on the basis of "passive concealment", while it was argued in appeal on the basis of active concealment.

1Russell on Crime (1964), Vol. 1, page 167.

2Kenny, Criminal Law (1962), page 364, paragraph 371.

3Russell on Crime (1964), Vol. 1, page 381.

4Stephen, History of Criminal Law of England (1883), Vol 2, page 238.

5Glazebrook, "How long then is the arm of the Law to be" (1962) 25 Modern Law Review 301.

6Glazebrook, "Misprision of felony—shadow or phantom" (1964) of American Journal of Legal History 283.

7Russell on Crime (1964), Vol. 1, page 168.

8*Skyes* v. *D. P. P.* (1961) 3 A.E.R. 33 (1961) 3 W.L.R. 371, 386; (1962) A.C. 528 (H.L.).

9*Reg* v. *King* (*Joseph*), (1965) 1 W.L.R. 706, 709 (C.C.A.).

10 For comment (see 1966 Jan) 82 L.Q.R. 24.

(c) *Essential ingredients.*—The essential ingredients of the offence were thus analysed in *Sykes*[1]:—

'This review of the authorities shows that the essential ingredients of misprision of felony are :—

"1. *Knowledge.*—The accused man must know that a felony has been committed by someone else. His knowledge must be proved in the way in which the prosecution have been accustomed in other crimes when knowledge is an ingredient, such as receiving, accessory after the fact, compounding a felony, and so forth. That is to say, there must be evidence that a reasonable man in his place, with such facts and information before him as the accused had, would have known that a felony had been committed. From such evidence the jury may infer that the accused man himself had knowledge of it. He need not know the difference between felony and misdemeanour—many a lawyer has to look in the books for the purpose—but he must at least know that a serious offence has been committed; or, as the Commissioners of 1840 put it, an offence of an "aggravated complexion": for after all, that is still, broadly speaking, the difference between a felony and misdemeanour. Felonies are the serious offences. Misdemeanours are the less serious. If he knows that a serious offence has been committed—and a lawyer on turning up the books sees it is a felony—that will suffice. This requirement that it must be a serious offence disposes of many of the supposed absurdities, such as boys.....stealing apples, which many laymen would rank as a misdemeanour and no one would think he was bound to report to the police. It means that misprision comprehends an offence which is of so serious a character that an ordinary law-abiding citizen would realise he ought to report it to the police.

2. *Concealment.*—The accused man must have "concealed" or "kept secret" his knowledge. He need not have done anything active: but it is his duty by law to disclose to proper authority all material facts known to him, relative to the offence. It is not sufficient to tell the police that a felony has been committed. He must tell the name of the man who did it, if he knows it; and so forth. All material facts known to him, see *Reg.* v. *Crimmins*[2]. If he fails or refuses to perform this duty when there is a reasonable opportunity available to him to do so, then he is guilty of misprision

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1*Sykes* v. *D. P. P.* (1961), 3 W.L.R. 371, 385 to 387; (1961) 3 All Eng. Rep. 33, 41, 42; (1962) A.C. 528 (H.L.).

2*Reg.* v. *Crimmins* (1959), V.L.R. 270.

He can perform this duty by reporting to the police or a magistrate or anyone else in lawful authority. Failure to do so is a misprision of felony.

Misprision of felony is itself a misdemeanour and is punishable by fine and imprisonment. Whatever limitations may have existed in olden days on the period of imprisonment that might be imposed, the only limitation now is that it must not be an inordinately heavy sentence.

My Lords, it was said that this offence is out of date. I do not think so. The arm of the law would be too short if it was powerless to reach those who are "contact" men for thieves or assist them to gather in the fruits of their crime; or those who indulge in gang warfare and refuse to help in its suppression. There is no other offence of which such persons are guilty save that of misprision of felony. I am not dismayed by the suggestion that the offence of misprision is impossibly wide; for I think it is subject to just limitations. Non-disclosure may be due to a claim or right made in good faith. For instance, if a lawyer is told by his client that he has committed a felony, it would be no misprision in the lawyer not to report it to the police, for he might in good faith claim that he was under a duty to keep it confidential. Likewise with doctor and patient, and clergyman and parishioner. There are other relationships which may give rise to a claim in good faith that it is in the public interest not to disclose it. For instance, if an employer discovers that his servant has been stealing from the till, he might well be justified in giving him another chance rather than reporting him to the police. Likewise with the master of a college and a student. But close family or personalities will not suffice where the offence is of so serious a character that it ought to be reported. In 1315 it was held that it was the duty of a brother to raise hue and cry against his own brother and he was fined for not doing so[1], and in 1938 a mistress was found guilty of misprision for shielding her lover[2]. The judges have not been called upon further to define the just limitations to misprision, but I do not doubt their ability to do so, if called upon. "My Lords, there was some discussion before us whether a man was bound to disclose a contemplated felony which comes to his knowledge, such as a planned raid on a bank. There is a striking passage in Lambard's Eirenarcha[3], which says that failure to do so is misprision of felony. So does

1*See* 24 Selden Society, pages 144, 145.

2*Mrs. Casserley's case*, The Times, May 28, 1938.

3Lambard's Eirenarcha (1614), page 289.

Dalton's Country Justice[1], and Hawkins' Pleas of the Crown[2], which are weighty authorities and the commissioners who reported on the Criminal Law in 1943 were clearly in favour of it. They said: The necessity for "making such disclosures extends, perhaps, with greater force, to the knowledge of a meditated crime the perpetration of which may, by means of such a disclosure, be prevented, than it does to the knowledge of one already committed". This is good sense and may well be good law. I would therefore reserve this point which does not arise in the present case.''.

(d) *Criminal Law Revision Committee.*—The Criminal Law Revision Committee made this recommendation[3]:—

"37. Misprision of felony consists of concealing or procuring the concealment of a felony known to have been committed. The offence was of doubtful existence before *Aberg*[4], where a woman who harboured an escaped prisoner was successfully prosecuted for misprision of his felony in escaping from prison as well as for being accessory after the fact to that felony. The Court of Criminal Appeal suggested in that case that the law as to misprision might require further consideration. In *Sykes* v. *D.P.P.*[5], the House of Lords rejected a submission that the offence no longer existed. In *King*[6], the Court of Criminal Appeal held that, although the offence did not extend to a mere failure by a person who had himself committed felony to disclose the felony when being questioned by the police, active concealment, as by telling a lie in order to put the police off the track, could amount to misprision. From the speeches in *Sykes's case* it appears that there may be some limitations as regards offences committed by relatives, but the matter is not clear. The offence is a common law misdemeanour punishable with imprisonment. Although ordinarily there is no limit to the term of imprisonment which may be imposed for a common law misdemeanour, the Court of Criminal Appeal said in *Sykes' case*[7], that it would be impossible to pass a sentence of more than two years' imprisonment for misprision of larceny because that was the maximum for the more serious offence of being accessory after the fact and because under section 29(1) of the Sheriffs Act, 1887 (c.55) the maximum punishment for a sheriff

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1Dalton's Country Justice (1619), page 211.

2Howkins' Pleas of the Crown, 8th edn., vol 2, chap. 29, section 23, page 444.

3Extract from the Seventh Report of the Criminal Law Revision Committee (May 1965). Cmd. 2659, pages 11-12, paragraphs 37—42.

4*Aberg*, (1948) 2 K.B. 173 ; 32 Cr. App. R. 114.

5*Sykes* v. *D. P. P.*, (1962) A.C. 528 ; 45 Cr.App R. 230.

6*King*, (1965) 1 W.L.R. 706.

7*Sykes* v. *D. P. P.*, (1961) 2 Q.B. 9, 16—16 ; 45 Cr. App. R. 230, 233.

or sheriff's officer for concealing a felon was one year's imprisonment. There is no offence of misprision of misdemeanour.

38. The offence of compounding a felony is an agreement not to prosecute a felon in consideration of the return of the goods or other reward; it is a common law misdemeanour. Whether compounding a misdemeanour is an offence is doubtful.

39. With the abolition of felony it is desirable that the law on these matters should be reconsidered. There are obvious objections to making a person criminally liable for not reporting to the police any minor offence of which he may happen to know. The present law of misprision is also open to objection in that it does not require that the omission to give information of the felony should be dishonest, and that it contains no clear limitations as regards offences committed even by near relatives.

40. On the whole we think that the only case needing to be provided for is one in which a person accepts or agrees to accept a bribe not to disclose information to the police. An offence of this character should replace the present law of misprision of felony and compounding offences. In specific terms we propose that it should be an offence to accept or agree to accept any consideration for not disclosing information about an arrestable offence other than consideration amounting only to the making good of, or reasonable compensation for, any loss or injury caused by the offence. As in the case of an offence of impeding under clause 4, the offence of withholding information would apply only to information about an arrestable offence which has in fact been committed. We would also limit the offence to where the person concerned knows or believes that his information might be of material assistance in securing the prosecution or conviction of an offender for the arrestable offence. We recommend that the maximum penalty should be two years' imprisonment. The necessary provisions are in clause 5(1). We propose that, as with the offence under clause 4, a prosecution for the offence under clause 5(1) should require the consent of the Director of Public Prosecutions [clause 5(3)] and that the offence should be triable summarily with the consent of the accused provided that the arrestable offence is so triable [clause 5(4)]. Clause 5(5) specifically abolishes the offence of compounding because of the possibility that it applies to misdemeanour.

41. As a result of the limitations proposed above the offence will not apply to a person who refrains

from giving information because he does not think it right that the offender should be prosecuted or because of a promise of reparation by the offender. It would be difficult to justify making the offence apply to those cases.

42. A more questionable limitation is that the offence would not apply to withholding information from the police, even in response to a question, out of mere unwillingness to assist them or to active concealment by positively misleading them, as in *King's case* referred to in para. 37 above. There is an argument for covering such cases and thus providing a penal sanction in support of the principle stated in the preamble to the Judges' Rules that citizens have a duty to help a police officer to discover and apprehend offenders. But public opinion would be unlikely to agree to an offence consisting of refusing to answer questions by the police about the commission of offences. This would confer a power on the police, covering a wide range of offences and backed by a substantial penalty, similar to that conferred by section 6 of the Official Secrets Act, 1920 (c. 75), under which it is an offence to refuse to answer questions put by an authorised senior officer of police for the purpose of obtaining information about the commission of the most serious offences under the Official Secrets Acts: and even there permission has to be obtained from the Secretary of State before the information can be demanded. In any event the offence would have to be subject to the right of the person being questioned not to give information about an offence to which he was himself a party, which right exists as regards the present offence of misprision, as mentioned in *King's case*. An offence of actively misleading the police might be easier to justify than an offence of refusing to give them information; but we do not think that there is a sufficient need to create it, and it would be difficult to distinguish between active misleading and mere withholding of information.".

(e) *Criminal Law Act*, 1967.—The Criminal Law Act recently passed in England has implemented the recommendation of the Criminal Law Revision Committee. The provisions of that Act—sections 1, 2(1), 5 and 12(6)—which are relevant to misprision, are quoted below:[1]

PART I

FELONY AND MISDEMEANOUR

Abolition of distinction between felony and misdemeanour.

1. (1) All distinctions between felony and misdemeanour are hereby abolished.

(2) Subject to the provisions of this Act, on all matters on which a distinction has previously been made between

[1]The Criminal Law Act, 1967 (Chapter 58) (21st July, 1967).

felony and misdemeanour, including mode of trial, the law and practice in relation to all offences cognisable under the law of England and Wales (including piracy) shall be the law and practice applicable at the commencement of this Act in relation to misdemeanour.

Arrest without warrant.

2. (1) The powers of summary arrest conferred by the following sub-sections shall apply to offences for which the sentence is fixed by law or for which a person (not previously convicted) may under or by virtue of any enactment be sentenced to imprisonment for a term of five years, and to attempts to commit any such offence; and in this Act, including any amendment made by this Act in any other enactment, "arrestable offence" means any such offence or attempt.

Penalties for concealing offences or giving false information.

5. (1) Where a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accept or agrees to accept for not disclosing that information any consideration other than the making good of loss or injury caused by the offence, or the making of reasonable compensation for that loss or injury, shall be liable on conviction on indictment to imprisonment for not more than two years.

(2) Where a person causes any wasteful employment of the police by knowingly making to any person a false report tending to show that an offence has been committed, or to give rise to apprehension for the safety of any persons or property, or tending to show that he has information material to any police inquiry, he shall be liable on summary conviction to imprisonment for not more than six months or to a fine of not more than two hundred pounds or to both.

(3) No proceedings shall be instituted for an offence under this section except by or with the consent of the Director of Public Prosecutions.

(4) Offences under subsection (1) above, and incitement to commit them, shall be included in Schedule 1 to the Magistrates' Courts Act, 1952 (indictable offences triable summarily with the consent of the accused) where that Schedule includes, or is under any enactment to be treated as including the arrestable offence to which they relate. 1952 c. 1955

(5) The compounding of an offence other than treason shall not be an offence otherwise than under this section.

12. (6) In this part of this Act references to felony shall not be taken as including treason; but the procedure on trials for treason or misprision of treason shall be the same as the procedure as altered by this Act on trials for murder.

APPENDIX 2

List Of Provisions Apparently Analogous To Section 44, Code Of Criminal Procedure, Or Section 176, Indian Penal Code.

(Acts are arranged alphabetically)

Act	Section	Punishment—Imprisonment or fine, if given in the section.
1	2	3
Arms Act, 1959 (54 of 1959)	Section 36 read with section 30.	3 months or Rs. 500 or both.
Atomic Energy Act, 1962 (33 of 1962).	Sections 7 and 24(2)	1 year or fine or both.
Central Excises and Salt Act, 1944 (1 of 1944).	Section 9 (*c*) read with section 37(2) (x).	6 months or Rs. 2,000 or both.
Central Silk Board Act, 1948 (61 of 1948).	Section 14 (1) (*a*) read with section 13(1)(xviii) (furnishing false information)	1 year or Rs. 1,000 or both
Census Act, 1948 (37 of 1948)	Section 11 (1) (*g*) read with section 10.	Rs. 1,000.
Coroners Act, 1871 (4 of 1871).	Section 17, second paragraph (disobeying a summon issued by a Coroner).	Any persons disobeying such summons shall be deemed to have committed an offence under sections 174, 175, 176, Indian Penal Code as the case may be.
Cotton Ginning and Pressing Factories Act, 1925 (12 of 1925).	Section 5 and section 5A.	Fine upto Rs. 50.
Cotton Textiles Cess Act, 1948 (7 of 1948).	Section 8 (*a*) read with section 9 (1) (furnishing false information).	6 months or 2,000 rupees or both.
Dramatic Performances, etc., Act, 1876 (19 of 1876).	Section 7 (obligation to furnish information called by State Governments, etc., regarding an intended public dramatic performance).	Whoever contravenes the section shall be deemed to have committed an offence under section 176, Indian Penal Code.
Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 (3 of 1959).	Section 7 (1) and section 7 (2)	Elaborate provisions as to fine.
Indian Explosives Act, 1884 (4 of 1884).	Section 8 (1) and section 8 (2)	Fine up to Rs. 500. But if the accident is attended by loss of human life, then imprisonment up to 3 months or fine or both.

Act	Section	Punishment—Imprisonment or fine, if given in the section.
1	2	3
Indian Forest Act, 1927 (16 of 1927).	Section 79 (1) and section 79(2) (*a*)	One month or 200 rupees or both.
Factories Act, 1948 (63 of 1948).	Sections 88, 89 and 92 (Reporting of accidents, and diseases contracted by workers).	3 months or Rs. 500 (plus Rs. 75/- per day if offence continues after conviction).
Foreigners Act, 1946 (31 of 1946).	Sections 6 and 7 read with section 14 (Obligation of masters of vessel or aircraft, etc., passengers and hotel keepers, to give required information regarding foreigners).	5 years, and also fine.
Foreign Exchange Act, 1947 (7 of 1947).	Section 19 (1) and section 23(1A)	Varying penalties.
Land Acquisition Act, 1894 (1 of 1894).	Section 9 (1) and section 10 (1) and 10 (2).	Sections 175 and 176, Indian Penal Code applied.
Medical and Toilet Preparations (Excise Duties) Act 1955 (16 of 1955).	Section 7 (*c*) read with section 19 (1) (ix)	6 months or Rs. 2,000.
Mines Act, 1952 (35 of 1952)	Sections 23, 70, 85A (Giving notice of accidents, etc.).	Section 70(1)—3 month or Rs.500 or both. Section 85A applies the provisions of section 176, Indian Penal Code.
Motor Vehicles Act, 1939 (4 of 1939).	Sections 88, 89 (*b*), 113 (2) (Reporting of accidents, etc.).	1 month or Rs. 200 or both
Multi-unit Cooperative Societies Act, 1942 (6 of 1942).	Section 5.	Rs. 50.
Petroleum Act, 1934 (30 of 1934).	Section 23 (*f*) read with section 27 (Reporting of accidents).	Rs. 500.
Plantations Labour Act, 1951 (69 of 1951).	Section 33	3 months or Rs. 500 or both.

Act	Section	Punishment—imprisonment or fine if given in the section
1	2	3
The Railway Property (Unlawful Possession) Act, 1966 (29 of 1966).	Section 4.—This section punished a person wilfully conniving at an offence according to the provision of this Act. It applies only to the owner of a land, or occupier of land, or his agent.	Imprisonment for five years or fine or both.
The Railway Property (Unlawful Possession) Act, 1966 (29 of 1966).	Section 6.—According to this section an officer of the Railway Protection Force who has arrested a person for an offence against the provisions of the Act, is empowered to conduct an "enquiry". Further, the officer is empowered to exercise powers under the Code of Criminal Procedure, like any officer-in-charge of a Police Station. (There are further provisions as to producing the accused before a Magistrate, etc.).	
The Railway Property (Unlawful Possession) Act, 1966 (29 of 1966).	Section 9.—According to this section, an officer of the Railway Protection Force is empowered to summon persons to give "evidence", and to produce documents for the purposes of enquiry. Such power includes the authority to summon specified documents or things relating to the matters in enquiry. This power is subject to the exemption under sections 132 and 133 of the Code of Civil Procedure (1908), regarding attendance.	

Act	Section	Punishment —imprisonment or fine, if given in the section.
1	2	3
	Every such enquiry is deemed to be a "judicial proceeding" within sections 193 and 228 of the Indian Penal Code.	
The Railway Property (Unlawful Possession) Act, 1966 (29 of 1966).	Section 12.—This section requires all officers of the Government and village officers to *assist* the superior officers and members of the Railway Protection Force in the enforcement of the Act.	No punishment in the Act.
(Indian) Railways Act, 1890 (9 of 1890).	Sections 83-84 read with section 96 (Reporting of accidents, etc.).	The Railway Company shall forfeit to the Central Government Rs. 100 for every day, during which omission continues.
(Indian) Registration Act, 1908 (16 of 1908).	Section 82 and 84(2).—(Every person legally bound to furnish information required by registering Officer).	
Treasure Trove Act, 1878 (6 of 1878).	Section 20 . . .	1 year or fine or both.
Wakf Act, 1954 (29 of 1954) .	Section 41 . . .	Fine up to Rs. 1,000.
Sarais Act, 1867 (22 of 1867) .	Sections 7 and 8 (Duties of keepers of Sarais) read with section 14.	Rs. 20, and further penalty of Re. 1 per day during which omission continues.
(Indian) Succession Act, 1925 (39 of 1925).	Section 317(3) (Failure by executor or administrator to file inventory when required by Court).	Section 176, Indian Penal Code applied.
(Indian) Works of Defence Act, 1903 (7 of 1903).	Section 11 read with sections 9(2) and 10 (obligation to make a statement in response to a notice proposing restrictions to be imposed on the use of the land).	Sections 175, 176, Indian Penal Code applied.

APPENDIX 2

LIST OF PROVISIONS ANALOGOUS TO SECTION 45 OF THE CODE OF CRIMINAL PROCEDURE IN SOME LAWS RELATING TO POLICE AND FORESTS.

(THE LIST IS ILLUSTRATIVE ONLY)

S. No.	Act/ Section	Gist of section	Remarks
1	2	3	4
1.	Bengal Village Chawkidari Act, 1870 (6 of 1870), sections 39 and 40.	Section 39 prescribes the duties of Chawkidars. He is required to give immediate information to the police about all offences committed or likely to be committed. He is also given the power to arrest.	Under section 40, the panchayat is given the power to control the chawkidar.
2.	Bombay Village Police Act, 1867 (8 of 1867), sections 6 to 13.		These sections impose duties on the Police Patel. Section 10 is important, and is quoted below :—
		Information to officer in charge of District Police Station when criminal in village has escaped or is not known.	"10. If a crime shall have been committed within the limits of the village and the perpetrator of the crime has escaped or is not known, the Police-patel shall forward immediate information to the Police-officer in charge of the District Police Station wihin the limits of which his village is situated, and shall himself proceed to investigate the matter, obtaining all procurable evidence relating to it which he shall forward to the said officer."
3.	The Forest Act, 1927 (16 of 192 7), section 79 (1) and section 79 (2).	Persons who have a right or interest in the forest property or in the employ of Government are required to give information about any forest offence (committed or likely to be committed) to the police, etc. and assist them.	For failure to do so, there are two provisions :— (1) Burden of proof lie-on such person ; (2) Punishable with imprisonment for one month or fine up to Rs. 200 or both.
4.	Madras Sati Regulation (10 of 1830) section 3.	Zamindars, Talukdars, etc., responsible for immediate communication to the police of intended sacrifice.	Punishment for neglect of duty is fine not exceeding Rs. 200 or, in default, imprisonment not exceeding six months.

S. No.	Act/Section	Gist of Section	Remarks.
1	2	3	4
5.	Madras Regulation (11 of 1816), sections 8, 9, 11 and 18.	These sections are intended to establish a general system of police throughout the State. Heads of villages are required to communicate with each other about Robbers and other gangs who commit offences. They are also required to report about arrival of suspicious persons into the village.	No punishlaent laid down in the Regulation.
6.	Madras Forest Act (5 of 1882), section 23.	Persons having right or interest in forest property or in the employ of Government are required to give information to the police of any offence committed or likely to be committed, and to assist the police or forest officer in his duties.	No punishment in the Act.
7.	The Criminal Tribes Act, 1924 (6 of 1924), section 26. (Repealed).	The Act is repealed.	
8.	The Oudh Laws Act (18 of 1876), section 39.	This section refers to the duties of village and Head policeman. He has a duty to inform police of the offences that take place in his area and make a proper report. He is given the power to arrest proclaimed offenders.	Punishment for not discharging his duties is prescribed in sectio 3 . Penalty is three months pay or three months imprisonment or both.
9.	Punjab Laws Act (Act 4 of 1872), section 39A.	The State Government is given the power to establish a system of village watchmen or municipal watchmen. Rules are to be made under this section. He is given some police powers also.	Punishment is provided for those who withhold assistance to the watchman or for those who connive with the offender.
10.	Punjab Laws Act (4 of 1872), section 39B.	A duty is imposed on every person to assist a village watchman or headman.	Regarding the watchman, if he fails to do his duty, fine up to Rs. 500 can be imposed.

LAW COMMISSION
THIRTY-THIRD REPORT
on
PROPOSED NEW SECTION 44A
of
THE CODE OF CRIMINAL PROCEDURE, 1898
MINUTE OF DISSENT

By

SHRI RAMA PRASAD MOOKERJEE,

Member, Law Commission

1. In view of the fact that I am not in agreement with the conclusion reached by the majority of the Commission it becomes necessary to indicate here, in short, the grounds why in my opinion, appropriate additional provision, though not exactly in the form as proposed, should be made in the Code of Criminal Procedure for the detection of and investigation about bribery as an offence.

I may indicate immediately that in paragraph 6 of the Majority Report of the Commission it is accepted that "the offence of bribery is a serious one need not be disputed.... .....; if therefore by an amendment the offence can be inserted in section 44 (or in a provision similar to section 44 to be put immediately after section 44) and such amendment is not open to any serious objection then the proposal for amendment deserves consideration".

2. The question referred to the Law Commission originated on a proposal made by the Central Bureau of Investigation that every public servant on being aware of the commission of an offence of bribery should be required to give information to an authority competent in law to investigate such offence and to assist in its investigation. A new section 44A was accordingly proposed to be added in the Code of Criminal Procedure. The Central Bureau had also sent up for consideration their draft of the proposed new section.

3. The first question that arises in this connection is whether a person, becoming aware of the commission of or the intention of any other person to commit offences punishable under some or other of the provisions of the penal law of the land, should be legally bound to furnish information about it to a magistrate or a police officer. Had the soundness and efficacy of such principle been accepted in India and elsewhere?

If the answer be in the affirmative, is there any policy to be followed, for including or excluding particular offences for attracting the said principle? What are the draw-backs or objections, if any, which need consideration?

The next question for consideration will be whether bribery as a crime has become so widespread and has assumed such a magnitude as would justify inclusion of a special provision in the Code of Criminal Procedure for its detection and punishment.

Fourthly whether such legal duty should be imposed on the public in general or only on the public servants.

If the answer to the questions above mentioned be in the affirmative, what would be the appropriate provisions which should be made in the Code of Criminal Procedure?

4. As regards the first of the above issues there is no doubt that the principle is well established that the responsibility, for the detection of or in the investigation about certain crimes, particularly which may be a social menace or has become a public necessity, is cast not only upon the police but on others as well—in some cases on citizens in general and in certain other cases on particular sections thereof—thus to discharge the duty resting upon all citizens to maintain the law of the land.

5. That such responsibility in some form or other had been cast not only on persons holding public offices but in some cases on the public also from early times and in other parts of the world will be apparent if reference be made to the two following as illustrative ones only:—

(i) As pointed out recently by Lord Denning in the House of Lords [*Sykes* v. *D.P.P.* (1961) 3 All-England Reports 33 (H.L.)].

> "Ever since the days of hue and cry, it has been the duty of a man who knows that a felony has been committed to report it to the proper authority so that steps can be taken to apprehend the felon and bring him to justice".

At Common Law concealment of a treason or felony was an offence of "misprision of treason" and "misprision of felony". No doubt bribery is not a felony, but a misdemeanour, at common law.

In the recent Criminal Law Act 1917 of England, however, all distinctions between felony and misdemeanour have been abolished. Section 5(1) of that Act provides penalties for concealing arrestable offences or giving false information under certain limited circumstances.

> "5(1) When a person has committed an arrestable offence, any other person who, knowing or believing that the offence or some other arrestable offence has been committed, and that he has information which might be of material assistance in securing the prosecution or conviction of an offender for it, accepts or agrees to accept for not disclosing that information any consideration other than the making good of loss

or injury caused by the offence, or the making of reasonable compensation for the loss or injury, shall be liable on conviction on indictment to imprisonment for more than two years."

The present provisions, therefore, are wider in respect of all "arrestable offences" but limited in the application.

(ii) Under section 104 of the New York Criminal Procedure a person refusing to aid public officers is guilty of misdemeanour.

6. So far as India is concerned, legal duty was imposed from an early period, under the Anglo Indian Law, on Zamindars, Village Headmen, Accountants, owners of lands in the village and others to give information or assist the police in certain cases. Reference may in this connection be made among others to the following Regulations:

Bengal Regulations—VI of 1810, 1 of 1811, 111 of 1812, VIII of 1814.

Madras Regulations—XI of 1811, 1 of 1830.

7. If reference is made to the provisions as now found in the Code of Criminal Procedure (Act V of 1898) it will appear that in Part 3 of the Code, Chapter IV is headed

"Of Aid and Information to the Magistrates, the Police and Persons making Arrests."

Sections 42 and 44 make provisions whereunder *public in general* are required to assist Magistrates and the Police and to give information of certain specified offences.

Under section 43 when a warrant is directed to a person other than a Police Officer *any other person* may be required to aid in the execution of such warrant.

Section 45, on the other hand, imposes on only *certain specified groups of persons* amongst the public the legal duty of reporting of certain matters to a Magistrate or officer in charge of the nearest Police Station. These specified categories of persons were regarded from the days of the Regulations to be *public servants* or quasi-public servants and some were even particularised sections or even members of the *general public.*

Section 187 of the Indian Penal Code makes punishable an omission to assist a public servant when bound by law to give such assistance.

8. It need be mentioned, at this stage, that the number or nature of offences included in the successive Codes of Criminal Procedure of 1861, 1872, 1882 and 1898 and various Amending Acts, so far as the above sections were concerned, had varied from time to time. The circumstances under which new offences were being added in these sections from after the early sixties will be considered later in this note.

9. The same principle has been accepted in a large number of legislative enactments in India—both Central and State, creating new offences—and imposing at the same time on public servants or quasi-public officers or sometimes on members of the public the legal duty not only to assist, on requisition made by a competent legal authority, but, also in a number of cases, to make voluntary and spontaneous reporting to the proper authority as soon as a person becomes aware of such an offence having been committed or likely to be committed or of an occurrence necessitating police or official action.

Reference may be made to the following as merely illustrative cases and it is by no means an exhaustive list:—

(1) Madras Regulation XI of 1816 (Sections 8, 9, 11 and 18).

(2) Madras Sati Regulation 1 of 1830 (Section 3).

(3) Bombay Village Police Act VIII of 1867 (Sections 6 to 13).

(4) Sarais Act XXII of 1867 (Sections 7, 8, 14).

(5) Bengal Village Chaukidari Act VI of 1870 (Section 39).

(6) Punjab Laws Act IV of 1872 (Section 39A).

(7) N.W.F.P. Village and Road Police Act XVI of 1875.

(8) Oudh Laws Act XVIII of 1876 (Section 39).

(9) Treasure Trove Act VI of 1878 (Section 20).

(10) Madras Forest Act V of 1882 (Section 23).

(11) Criminal Tribes Act VI of 1924 (Section 25) now repealed.

(12) The Forest Act XVI of 1927 (Section 79).

(13) Foreigners Act XXXI of 1946 (Sections 6, 7).

(14) Mines Act XXXV of 1952 (Sections 23, 70, 85A).

(15) The Railways Property (Unlawful Possession) Act XXIX of 1966.

10. Thus there is no escape from the conclusion that imposition of a legal duty in apropriate cases either on the public in general or on particular public officers or groups of persons to assist in the detection or investigation of offences is based on sound principles and has already been accepted and given effect to in different systems of law including the Penal Laws in India.

On this general question, the other members of the Commission do not appear to hold a different view.

11. The second question for consideration will be, is there any policy followed for including or excluding particular offences for attracting the application of this principle, and also what are the draw-backs or objections, if any, to be taken into account?

12. The Central Bureau of Investigation had, no doubt, proposed to introduce a new section 44A and that after section 44 of the Code of Criminal Procedure but to determine the policy to be followed for the inclusion of particular offences or for deciding whether any other new class of offences may be added in Chapter IV of the Code it will not by itself, be helpful, far less conclusive, to categorise the list of offences as now found to be listed in section 44 of the Code. As will be noticed later there is a fundamental difference between the scope of section 44 and that of the proposed new section.

Moreover, reference to the frame and contents of sections 44 and 45 as they stood in the earlier Codes (from 1861) and the attempts made by the Amending Acts from time to time will show that new offences were being added or the provisions were being made more stringent or scope was being extended according to the exigencies of the social or administrative requirements and sometimes on political considerations at the particular period.

13. I would first proceed to consider the changes made in the successive Codes and by some of the Amending Acts and see how the contents of the present *section 44* were arrived at.

In *1861 all persons* were required to give information about *only crimes relating to theft, robbery, dacoity mischief by fire and house trespass to commit serious offences* (Vide Section 138 of Act XXV of 1861).

It is significant that while grave offences were not included—some only of the more common and the then prevalent crimes in the rural areas were included—police service also was so inadequate at that period.

In *1872* some of the *offences against the State* (Viz. as under sections 121 to 126 and 130 of the Indian Penal Code and murder and culpable homicide not amounting to murder (sections 302 and 304) were added to the list.

Reference to the then political condition in the country and the administrative needs as felt by the British rulers will explain why these offences against the State were included and the opinion expressed by distinguished members of the Executive Service about the omission of Murder in the earlier Code are significant. (Vide section 89 of Act X of 1872).

One of such remarks was that one was "not aware on what principle the offences referred to in this section have

been selected;.....I do not understand why a person is to be bound to give information of the commission of "theft but not of murder".

In *1882* though no new offences were added to the list the language was made more emphatic and the provisions *made stringent* (Vide section 44 of Act X of 1882).

In *1894* the scope of the section was *first* widened by Amending Act III of 1894 for including *some only of the offences* even when *committed outside British India*—to include for administrative reasons offences committed in the Native States.

One would not overlook the fact that *some only* of the offences listed were mentioned—the contemporary papers explain the reason.

In *1894*, by another Amending Act (Act VIII of 1894) certain offences against public tranquility (Sections 143, 144, 145, 146, 147, 148 of the Indian Penal Code) were included.

Political agitation and manifestations of the political consciousness of the people led the then rulers to introduce these provisions.

In the Code of *1898* (Act V of 1898) section 44 was retained substantially in the same form as in 1894.

In *Act III of 1914* various provisions of the Penal Code about offences relating to coin, stamps, and currency notes were added. Proceedings of the Legislature explain the grounds for this important innovation from the policy previously followed.

Reference to the respective Objects and Reasons, Reports of Select Committees when appointed and particularly the discussions in the Legislative Council are instructive and explain the topical reasons for the changes made.

14. It should not also be lost sight of that there is a material point of difference between the scope and application of section 44 of the Code of Criminal Procedure and the proposal as made by the Bureau.

In *section 44* the *duty* of giving information is *on the public in general*, while the proposal under consideration is to impose the legal *duty* on only *public servants*.

As already noticed by me, sections 44 and 45 of the Code also differ in the same way—the former fixes the duty on the public, the latter on certain ascertained groups or categories.

If, therefore, a comparison is to be made, reference to section 45 will be more apposite than to section 44.

Reliance may in this connection be placed on the observations of the Joint Select Committee which considered the 1921 Bill (*Vide* paragraph 17 *ante* of the Majority Report).

It is from this stand point that my view is that it is not very relevant or helpful to categorise the offences included in section 44 and compare the same with bribery as an offence for determining whether *public servants* should be under a legal duty to report cases of bribery.

15. I would now proceed to examine the provision of section 45.

So far as section 45 is concerned it should be noticed that in Act XXV of 1861 there was no provision corresponding to the present section 45.

In *1872* (in Act X of 1872) section 90 modelled on the principle as in the old Regulations was introduced imposing onerous duties and responsibilities on some *specified public and quasi-public servants* and certain classes of owners or occupiers of lands in villages, etc., to report to the nearest Magistrate or the officer in charge of the nearest police station any information which such person may have about various offences or certain matters so as to enable the police to start prompt investigation.

Reference has already been made to the views—expressed among others by experienced District Officials—(as preserved in the Legislative Department Proceedings relating to the 1872 Code) about the absence of any avowed policy in including or excluding certain offences in sections 69 and 70 (which were the precursors of the present sections 44 and 45 of the Code of Criminal Procedure). I respectfully agree with the views so expressed that there could possibly be no logic or policy for including theft and excluding murder in section 138 in Act XXV of 1861 and of including in section 90 of Act X of 1872 trivial as well as serious cases and imposing an onerous duty, not only on village officers but even on owners or occupiers of lands in the villages and even their agents to report to the police commission or intention to commit any non-bailable offence at or near the village.

In *1882* no substantial alterations were made except that information about the commission of Sati was not required to be reported as under the 1872 Act (*Vide* section 45 of Act X of 1882).

In *1894* a new clause was added making it incumbent on the persons specified to report—

> "any matter likely to affect the *maintenance of order* or the *prevention of crime* for *the safety of persons or property* respecting which the District Magistrate by general or special order with the previous sanction of the Local Government has directed him to communicate information."

It would be noticed how wide the scope of this section had been made as under section 2 of Act III of 1894.

Provision was also made for information being given when the commission of or the intention to commit, *at any place outside British India* near such village, offences under sections 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460 became known to a person.

It will be noticed that under section 45 a larger number of offences were required to be reported by the specified persons than under section 44 of the Act. This is principally because section 44 requires *every member of the public* to make the report whereas under section 45 the responsibility is imposed only on *certain specified groups of persons.*

Under Act V of 1898 the scope of this section was further extended.

Under Act III of 1914 various offences relating to coins, stamps, Bank Notes etc. were brought within the scope of section 45 as was being done in section 44 also noticed earlier.

In 1955 by Act XXV of 1955 after the establishment of Panchayats the category of persons required to give information was widened by including—

> "every member of a Village Panchayet, other than a judicial panchayet."

16. It may be noticed in passing that section 45 had been introduced in other areas also and keeping in view the special requirements of the area and the particular period, additional crimes or restricted provisions have been made. To illustrate the policy followed, reference may be made to one of such cases when the provisions of the Code of Criminal Procedure were extended to Upper Burma, then under British Rule.

In Upper Burma the following had been substituted for section 45 by Upper Burma Village Regulation XIV of 1887—

> "A headman appointed under the Upper Burma Village Regulation, XIV of 1887, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest Police station or military post, whichever is the nearer, any information which he may obtain respecting—
>
> (a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in his village;
>
> (b) the resort to any place within, or the passage through his village, of any person whom he knows,

or reasonably suspects to be, a dacoit, robber, escaped convict or proclaimed offender;

(c) the commission of, or attempt or intention to commit, within his village any of the following offences, namely (i) murder, (ii) culpable homicide not amounting to murder, (iii) dacoity, (iv) robbery, (v) offence against the Indian Arms Act XI of 1878, and (vi) any other offence respecting which the Deputy Commissioner, by general or special order, made with the previous sanction of the Commissioner, directs him to communicate information;

(d) the occurrence in his village of any sudden or unnatural death or of any death under suspicious circumstances.

Explanation.—In this section, village has the meaning assigned to the word in the Upper Burma Village Regulation, 1887".

17. As noticed by the Joint Committee which considered the Amending Bill of 1921—

> "when the obligation to give information to the police is laid on a restricted class of persons"

the same considerations as in the case of section 44 are not attracted.

In my view therefore, unless there be any over-riding consideration we need examine less strictly the desirability of imposing on particular groups of persons in respect of any particular crime, the responsibility of informing the police on the happening or the possibility of occurrence of such a crime.

The principle or policy to be followed in deciding whether a particular offence should or need be included under any of the sections in Chapter IV in Part 3 of the Code of Criminal Procedure is whether that offence has assumed that magnitude or character that to detect it and to bring the offender to trial the Police or the Magistrate requires the assistance of the public. This is in conformity with the imposition of a duty—

> "resting upon all citizens to maintain the law of the land". [Russell on Crime (1964) Vol. I—page 167].

18. The next branch of the enquiry is whether there are any serious objections or obstacles in imposing such an obligation even on a restricted group of persons.

The principal difficulty, according to the majority view of the Commission, is that on such a provision being made the persons concerned will be faced with the problem of resolving a conflict between the duty to report and not to malign one's neighbour—"a delicate choice which should not be forced on the informant".

I do not think a public servant should find it difficult or even embarrassing to make the proper choice discharging a public duty and rise above all other considerations. Public servants need and should have the proper sense of public duty and it will be a sad commentary on, and estimate of, the morale and standard of our public servants if one thinks otherwise.

The next difficulty referred to by the majority is the risk which a person will have to face when a wrong assumption is made by the informant and he is subsequently proceeded against by the person maligned.

This argument also, if accepted, will cut at the root of all the provisions contained in Chapter IV of the Code of Criminal Procedure and the principle and policy under which not only particular groups of persons but even the public in general are enjoined to assist the Police in the detection of certain crimes.

Once we accept that principle and policy, an examination of or reference to the general question about the risk which an information runs is, in my view, with great respect, not pertinent for arriving at the final decision on this occasion.

It is neither suggested nor is it the general policy that in respect of the commission of *every* offence every member of the public should be fixed with the legal duty of informing the police. As pointed out already various considerations come into play before the Legislature can or should impose a legal duty on the public or particular sections thereof to assist the police.

I would not, in that view, enter into a discussion about the legal aspect as discussed in the main report or what is or should be the test or safeguards which need be introduced.

I need only refer to the fact that the case law discussed with reference to the liability or risk which ensues when a report made to the Police turns out to be erroneous or false may not all be attracted in the present case. Sufficient safeguards may be provided to avoid harassment of *bona fide* information being given. The responsibility is to be cast on the Police for proper enquiry and investigation after the Police is alerted. The object of the section will be deemed to be fulfilled after information has reached the Police. If the difficulties envisaged were to be accepted as a general principle over-riding the policy and principles underlying the sections in Chapter IV, the only logical conclusion will be to omit altogether the responsibility of the public or sections thereof, irrespective of the question whether the offence committed is serious or of a particular category.

Whether there may be any special difficulty or objection for including bribery, if it is decided to be included at all, will be considered later.

19. The next question for consideration is whether bribery has become so widespread and has assumed such magnitude as to warrant inclusion of a special provision requiring assistance of the public, or a particular section thereof, in the detection thereof.

It is not necessary for me to discuss this in great detail as in paragraph 6 of the Majority Report it has been accepted, as pointed out in the opening paragraph of this Minute. It is conceded that the legislature also has in recent times emphasised the seriousness of the position and introduced special and stringent provisions as in the Prevention of Corruption Act 1947. Since then the proposals for the appointment of Vigilance Officers and of Lokpals have gained acceptance by all sections.

20. It is therefore next for consideration whether the responsibility should be cast on the public in general or on public servants as proposed. At this stage the imposition of the duty may be on the public servants. If this can assist to control this widespread crime in the public administration that will be an example in other spheres. It is not necessary at the initial stage to include all members of the public.

21. We may now consider whether apart from the general objections adverted to already there are any special objections or difficulties in introducing bribery in the list.

It has been pointed out by the Majority that bribery is not analogous to the offences included under section 44. I have already noticed that in view of the material difference between section 44 and the present proposal such differentiation is not very apposite. If, however, the scope of the present proposal be compared with the offences included in section 45 of the Code, it will appear to be more relevant and further the offences included in section 45 are much wider and some of those are more trivial than the offence of bribery of the magnitude it has now assumed. References to analogous provisions in other laws demonstrate the position that such duty is not limited to the maintenance of order or security.

It is next noticed that it will be difficult for a layman to determine whether the offence of bribery has been committed—as a "host of ingredients" are required to prove bribery.

If the various sections of the Penal Code, dealing with each of the offences included in section 45 of the 'Code of Criminal Procedure', are analysed, it will be difficult to differentiate between the ingredients of bribery with those others. To a public servant, in my view, it is not difficult

to know when bribes are being offered or being taken—it is the majority of cases so obvious.

22. When this proposal was before the Commission, references had been made to the different High Courts and Governments for expression of opinion on the draft as forwarded by the Bureau.

It is significant that most of them (twelve, including two High Courts, some of the Judges of two other High Courts, four Union Territories, two State Governments and two Public bodies) are in favour of some provision being made.

Three of the High Courts, some of the Judges of another Court, and one of the State Governments intimated that they had no comments to make.

Two other High Courts and some Judges of a High Court agree to the proposal subject to certain modifications in the form.

Two Judges of a High Court are in favour of the proposal provided public officers are not victimised for making disclosures against their superior officers.

Some of the Judges of two High Courts even propose that every member of the public should be brought under the proposed obligation.

If reference is made to the detailed opinions as indicated above it will appear that those in favour outweigh the objections raised by the majority of the Judges of only one High Court, or by the Administration of only one Union Territory, and only by two State Governments and the minority opinion expressed by one or more Judges in only two of the High Courts.

23. I am fortified in my view by the overwhelming majority of the opinions received by the Commission.

24. As I had indicated in the beginning, decision has to be made to include "bribery" in the category of one or other of the sections in Chapter IV.

The scope of our enquiry is not limited to the draft of the new section as proposed by the Bureau.

25. I should further point out that in the Majority Report also, safeguarding of the public interest and the urgency created in the mind of public servant to treat corruption as a social evil it has not been disputed and lost sight of. But it is held that regard must be had to the various difficulties referred to in the earlier part of that report.

It is further, however, observed (paragraph 56 in the Main Report):—

> "Notwithstanding this objection the proposal to add the offence of bribery and corruption would still deserve

consideration, if there were counter-balancing considerations, such as a substantial advantage to be gained in practice. We are not sure, however, whether the obligation proposed to be imposed would actually be enforced in practice".

Reliance is placed on certain observations in *Ram Balak Singh* vs. *The State* (A.I.R. 1964 Patna 62, at page 65).

To put it in other words it is held that the introduction of a provision as proposed was not likely to be of any practical benefit or serve the purpose as anticipated.

It should be pointed out that the relevant facts in the decision referred to were that a person had been mercilessly killed on a public road and two persons who subsequently deposed during the trial had not discharged the legal obligation cast on them under section 44 of the Code of Criminal Procedure and given information to the nearest Magistrate or Police Officer (the Police Office was very near) although they on their own admission had appeared immediately after the murder had taken place.

The learned Judges had criticised the inaction of the Police in not proceeding against the said two persons under section 202 of the Indian Penal Code. The Court further observed with reference to section 44 of the Code of Criminal Procedure.

> "The provisions have been designedly made so that crimes are brought to book and not suppressed by persons knowing about them. The authority should make some use of the aforesaid provisions so that the object of the Legislature in enacting the provisions, is not lost completely".

The learned Judges did not question the necessity and the appropriateness of the provisions contained in section 44 of the Code. On the other hand the police was called upon to make use of the provisions made.

The inaction or the failure of the Police to make use of the provisions which were not only considered by the Legislature to be useful and beneficial but were considered to be sound from the juristic point of view did not justify the deletion of such a provision from the Code. Such failure or omission by the defaulting party should be avoided.

I do not share the view that the obligation proposed to be imposed on Government servants would not be enforced in practice in spite of the fact that there is a public demand for eradication of the evil of widespread bribery.

As I have indicated already, the proposal is not "a very wide provision" but a restricted one for making an attempt to check a public menace now admitted to be prevalent. Accordingly the limited provisions will not attract the criticism by the Court of Appeal in England (made in a different context) relied upon in paragraph 54 *ante*.

On analogous grounds the observations of the Criminal Law Commissioners in 1940 (also referred to in paragraph 54 *ante*) are not wholly apposite. The present proposal does not "require *every one, without distinction*, as to the nature and degree of the offences to become an accused".

As it has been noticed already the objections to and criticism based on the provisions as in the wide provision of section 44 of the Code should not by themselves be applied to negative the restricted and limited scope of the proposal as before the Commission. As I have pointed out already the provision in section 45 of the Code would support the acceptance of the proposal now made to include bribery within the limited scope of provision similar to section 45.

26. In addition to the proposal as discussed above a further suggestion has been made about the disclosure of facts in statements made in the course of investigations in respect of offences connected with bribery.

Whether section 161 (2) needs any amendment may have to be considered only after the first part of the suggestion is accepted. I do not think that it is necessary to deal with that part of the suggestion at this stage.

27. To summarise the conclusion reached by me it may be stated that—

(*i*) bribery as a crime has become so widespread and has assumed such a magnitude that it would be proper to include a special provision in Chapter IV of the Code of Criminal Procedure for its detection and punishment;

(*ii*) the legal duty of informing the occurrence of such an offence should not at this stage be imposed on the public in general but only on the public servants;

(*iii*) awareness of the commission of offence should be the personal knowledge of the informant in course of his duties as a public servant;

(*iv*) from the category of public servants, Judicial Officers should be excluded (as has been provided by the 1925 Amendment in the case of a Judicial Panchayat); and

(*v*) a modified draft should be circulated for eliciting public opinion before the present proposal can be rejected.

28. Before I conclude this Minute I would refer to the following observations by Vanderbilt C. J. (in The Challenge of Law Reform, page 169).

"The reworking of our law must be based on present economic, political, *social conditions* and apparent trends into the future. To the analytical and historical

study of the law must be added the Sociological approach and because experiments are not as available in the Law as they are in the natural sciences, we must resort to the comparative study of the law".

To meet the local or tropical social requirements the Law-Makers need not be circumscribed by—

"old modes of trial" or to have in mind so much the reliance in the early centuries'.

While considering the necessity of reconsidering certain old rules of evidence, the observations by Lord Chief Justice Coleridge may also not be forgotten when modifications in or reform of law is being considered—

"Truth was investigated by rules of evidence so carefully framed to exclude falsehood, that very often truth was quite unable to force its way through the barriers erected against its opposite, ... Non-suits were constant, not because there was no cause of action, but because the law refused the evidence of the only persons who could prove it".

(37 Contemporary Review, 798).

RAMA PRASAD MOOKERJEE.

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