LAW COMMISSION OF INDIA

TWENTY-NINTH REPORT

(PROPOSAL TO INCLUDE CERTAIN SOCIAL AND ECONOMIC OFFENCES IN THE INDIAN PENAL CODE)

FEBRUARY, 1966

GOVERNMENT OF INDIA ● MINISTRY OF LAW
47 Law—1.

CHAIRMAN
LAW COMMISSION,
5, Jor Bagh, New Delhi-3,
Dated 25th March, 1966.

Shri G. S. Pathak,
Minister of Law,
New Dehi.

MY DEAR MINISTER,

I have great pleasure in forwarding herewith the Twenty-ninth Report of the Law Commission on the proposal to include certain Social and Economic Offences in the Indian Penal Code.

2. The subject was taken up by the Law Commission on a reference from the Ministry of Home Affairs, details of which are stated in the Report. A draft Report on the subject was prepared after a study of the relevant laws on the subject, the laws of certain foreign countries and the literature thereon. The proposals of the Santhanam Committee (which were the subject-matter of the reference by the Home Ministry) were also circulated to State Governments, High Courts and other interested persons and bodies for comments.

3. The draft Report as well as the comments received on the proposals of the Santhanam Committee were considered at the 67th meeting of the Commisson from the 21st to 23rd April, 1965, the 68th meeting of the Commission on the 22nd, 24th and 25th May, 1965, the 69th meeting of the Commission held from the 27th to 30th September, 1965, and the 70th meeting of the Commission held from the 19th to 22nd October, 1965.

4. The draft Report was revised in the light of the discussions at the meetings mentioned above. The revised draft Report was considered again at the 71st meeting of the Commission held on the 25th, 26th and 27th November, 1965 and at the 72nd meeting of the Commission held from the 15th to 17th December, 1965. The draft Report was further revised in the light of the decisions taken at these two meetings.

5. The revised draft Report was considered again at the 73rd meeting of the Commission, held on the 9th and 10th February, 1966, and was approved subject to certain modifications. The modifications were carried out, and the Report was signed on the 11th February, 1966.

6. I would like to thank the Secretary Mr. P. M. Bakshi for the immense help he has given in the collection of the material and in the preparation of the draft Report. His help considerably lightened the task of the Commission and the matter placed before it materially helped the Commission in its final recommendations.

Yours sincerely,
J. L. KAPUR.

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INTRODUCTORY

Genesis of the Report

1. The circumstances in which the preparation of this Report was undertaken may be briefly stated. The Government of India appointed in 1962 a Committee to review the problem of corruption and to make suggestions[1] on various matters connected therewith. One of the terms of reference of the Committee was, "To suggest changes in the law which would ensure speedy trial of cases of bribery, corruption and criminal misconduct and make the law otherwise more effective[2]."

Dealing with this, the Committee[3] made the following observations:—

> "7.2. The substantive law relating to bribery, corruption and criminal misconduct is contained in the Indian Penal Code and the Prevention of Corruption Act, 1947, the procedural law in the Criminal Procedure Code, Criminal Law Amendment Act, 1958 and some special rules of evidence relating to such cases in the Prevention of Corruption Act. The working of the relevant provisions of these enactments in prosecutions in courts and also at the stage of investigation have disclosed that certain changes in the law are required in order to ensure speedy trials and more effective results. We have examined the existing provisions in the light of experience gained in numerous cases, and also in the context of social changes and economic objectives which have created new problems.
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> "7.3. *Amendments to the Indian Penal Code*
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> The Indian Penal Code was enacted in 1860, and though it has been amended here and there, its main structure has continued intact during the last 100 years and more. It is an admirable compilation of substantive criminal law, and most of its provisions are as suitable today as they were when they were formulated. But the social and economic structure of India has changed to such a large extent, especially during the last 17 years of freedom, that in many respects the Code does not truly reflect the needs of the present day. It is dominated by the notion that almost all major

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[1]See the Report of the Committee on the Prevention of Corruption, (1964), page 1, para. 1·1. (The Committee is hereafter referred to as the Santhanam Committee).

[2]See the Report of the Santhanam Committee, page 2, para 1·2 and page 53, para. 7·1.

[3]Report of the Santhanam Committee, page 53, paras. 7·2 and 7·3.

crimes consist of offences against person, property or State. However, the Penal Code does not deal in any satisfactory manner with acts which may be described as social offences having regard to the special circumstances under which they are committed, and which have now become a dominant feature of certain powerful sections of modern society.".

2. The Report[1] of the Santhanam Committee broadly categorised the offences as follows:—

"(1) Offences calculated to prevent or obstruct the economic development of the country and en danger its economic health;

(2) Evasion and avoidance of taxes lawfully imposed;

(3) Misuse of their position by public servants in making of contracts and disposal of public property, issue of licences and permits and similar other matters;

(4) Delivery by individuals and industrial and commercial undertaking of goods not in accordance with agreed specifications in fulfilment of contracts entered into with public authorities;

(5) Profiteering, black-marketing and hoarding,

(6) Adulteration of foodstuffs and drugs;

(7) Theft and misappropriation of public property and funds; and

(8) Trafficking in licences, permits, etc."

3. The Committee then went on to observe[2]:—

"Some of these offences have been made punishable by special enactments. We are of the opinion that it is desirable to add a new chapter to the Indian Penal Code bringing together all the offences in such special enactments and supplementing them with new provisions so that all social offences will find a prominent place in the general criminal law of the country. It is a matter for the Government to consider whether this work should be undertaken by a special legal committee or referred to the Law Commission.".

Reference to Law Commission.

4. The Government[3] decided, that the matter should be considered by the Law Commission, and referred the

[1]Report of the Santhanam Committee, pages 53, 54, para. 7·3.

[2]Report of the Santhanam Committee, page 54, para. 7·4.

[3]Ministry of Home Affairs.

above proposal of the Santhanam Committee to this Commission[1], as the revision of the Indian Penal Code was under the Commission's consideration. That is the genesis of this Report. In view of the importance of the matter, we decided to deal with it separately from the general revision of the Indian Penal Code.

Material studied.

5. In order to facilitate our consideration of the subject, we have studied the various special enactments relating to the offences in question[2], the penal laws of several other countries[3], and the literature available on the subject, including the Reports of several Committees[4]. A study of the judicial decisions relating to these offences was also made, in order to find out whether the existing provisions relating to these offences are not adequate[5].

The proposals of the Santhanam Committee were circulated by us for comments to State Governments and High Courts, and several other persons and bodies. We have considered each one of these comments in detail. The important points made in some of the comments will be dealt with in the Report under the relevant categories[6].

White-Collar Crimes

White-Collar crimes.

6. From the discussion in another part of the Santhanam Committee's Report[7], it would appear, that the Committee attached great importance to the emergence of offences and mal-practices known as "white-collar" crime. We quote the relevant portion:—

> '2.13. The advance of technological and scientific development is contributing to the emergence of "mass society", with a large rank and file and a small controlling elite, encouraging the growth of monopolies, the rise of a managerial class and intricate institutional mechanisms. Strict adherence to a high standard of ethical behaviour is necessary for the even and honest functioning of the new social, political and economic processes. The inability of all sections of society to appreciate in full this need results in the emergence and growth of *white-collar and economic crimes*, renders enforcement of the laws, themselves not sufficiently deterrent, more difficult. This type of

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[1]Para. 3, *supra*.

[2]See Appendices 1 to 8.

[3]Particularly, England, Australia, Canada, New Zealand, United States of America, Soviet Russia, Hungary, Norway, France and Argentina.

[4]See Appendices 12, 13, 14 and 15.

[5]A part of the material studied by us will be found in some of the Appendices to this Report.

[6]See paragraphs 38, 76, 96, 97, 120, 125, 136, 138, 144, 164, and 168, *infra*.

[7]Report of the Santhanam Committee, page 11, paras 2·13 and 2·14.

crime is more dangerous, not only because the financial stakes are higher but also because they cause irreparable damage to public morals. Tax-evasion and avoidance, share-pushing, mal-practices in the share market and administration of companies, monopolistic control, usury, under-invoicing or over-invoicing, hoarding, profiteering, sub-standard performance of contracts of construction and supply, evasion of economic laws, bribery and corruption, election offences and mal-practices are some examples of *white-collar crime*.'.

"2.14. Corruption can exist only if there is some one willing to corrupt and capable of corrupting. We regret to say that both this willingness and capacity to corrupt is found in a large measure in the industrial and commercial classes. The ranks of these classes have been swelled by the speculators and adventurers of the war period. To these, corruption is not only an easy method to secure large unearned profits, but also the necessary means to enable them to be in a position to pursue their vocations or retain their position among their own competitors. It is these persons who indulge in evasion and avoidance of taxes, accumulate large amounts of unaccounted money by various methods such as obtaining licenses in the names of bogus firms and individuals, trafficking in licenses, suppressing profits by manipulation of accounts to avoid taxes and other legitimate claims on profits, accepting money for transactions put through without accounting for it in bills and accounts (on-money) and under-valuation of transactions in immovable property. It is they who have control over large funds and are in a position to spend considerable sums of money in entertainment. It is they who maintain an army of liaison and contact men, some of whom live, spend and entertain ostentatiously. We are unable to believe that so much money is being spent only for the purpose of getting things done quickly. It is said that, as a large majority of the high officials are incorruptible and are likely to react strongly against any direct attempt to subvert their integrity, the liaison and contact men make a careful study of the character, tastes and weaknesses of officials with whom they may have to deal and that these weaknesses are, then, exploited. Contractors and suppliers who have perfected the art of getting business by under-cutting, of making good the loss by passing off sub-standard works and goods generally spare no pain or expenditure in creating a favourable atmosphere. Possession of large amounts of unaccounted money by various persons including those belonging to the industrial and commercial classes is a major impediment in the purification of public life. If anti-corruption activities are to be successful, it must be recognised that it is as

important to fight these unscrupulous agencies of corruption as to eliminate corruption in the public services. In fact they go together.".

Relevance of crimes.

7. The above extract[1] from the Santhanam Committee's Report seems to indicate, that many of the offences which that Committee had in mind were crimes usually known as white-collar crimes. We, therefore, proceed to discuss the problem of white-collar crime in detail.

Problem of white-collar crimes.

8. In recent times the problem of white-collar crime has received considerable attention. "White-collar crime" has been defined approximately as a crime committed by a person of respectability and high social status in the course of his occupation[2]. The emphasis is on the connection with *occupation*. The commission of a crime of this category is facilitated by the office, calling, profession or vocation of the individual concerned. White-collar crimes, thus, exclude crimes like murder, adultery and intoxication, even if committed by people of the upper class, since these have nothing to do with their *occupation*.

9. The object of those who had drawn attention to the prevalence of white-collar crime was to educate the public about the harm caused to the society by such crime, and to point out that these crimes should bear the same moral stigma as acts regarded as crimes according to the orthodox notions. It was pointed out[3], that one of the reasons for the differential implementation of the law in the area of white-collar crimes was the "relatively unorganized resentment of the public" towards such crime. The reasons for the absence of such resentment were stated to be as follows[4]:—

(*a*) The violations of law in such cases are complex, and can be appreciated only by experts;

(*b*) The public agencies of communication (like the press) do not express the organised moral sentiments of the community, partly because the crimes are complicated and cannot be easily presented as news, but probably in a greater degree because these agencies of communication are themselves controlled by businessmen involved in the violations of many of these laws.

(*c*) The laws for the regulation of business belong to a relatively new and specialised part of the statutes.

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[1]Para. 6, *supra*.

[2]Sutherland, White-Collar Crime, (1949), page 9. See also Sutherland and Cressey, Principles of Criminology (1960), page 40.

[3]Sutherland, White-Collar Crime, (1949), page 49.

[4]See Sutherland, White-Collar Crime (1949), pages 50-51.

Focusing of attention on white-collar crimes in the west.

10. Attention was focussed on the problem of white-collar crime in England and the U.S.A. after the First World War, when it was realised that losses resulting from business frauds far exceeded those from the offences against property that were punishable under the orthodox notions of crime. It was the financier, not the gangster, who was the greater public enemy[1]. As defined by Sutherland, white-collar crime is a "violation of the criminal law by a person of the upper socio-economic class in the course of his occupational activities".

Later, he seems to have added a refinement to the definition, by defining a white-collar criminal as "a person of the upper socio-economic class who violates the criminal law in the course of his occupational *or professional* activities[2]."

He pointed[3-4] out, that white-collar crime was more dangerous to society than crimes committed by the members of the lower class, first, because the financial losses were higher, and secondly, because of the damage inflicted on the public morals.

The necessity of revising the social attitude towards such anti-social behaviour and perceiving its dangers was pointed out by various other writers also[5-6].

Reasons why such crimes escape punishment.

11. Sutherland also elaborated the reasons why such crimes went unpunished. "The difference in the implementation of the criminal law is due principally to the difference in the social position of the two types of offenders". Because of their social status, implementation of the criminal law in relation to white-collar criminals becomes difficult. They are more powerful than the traditional criminals "Consumers, investors and stockholders are unorganised, lack technical knowledge and cannot protect themselves"[7-8]

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[1]Thurman Arnold, Folklore of Capitalism, page 276.

[2]See Dictionary of Sociology edited by Fairchild (Vision Press, London) (1958), under "criminal White-collar", contributed by Edwin H. Sutherland.

[3]See Annals of the American Academy of Political and Social Sciences (September, 1941), Vol. 217, page 112.

[4]See also Sutherland, "White-collar Criminality", (1940), American Sociological Review, pages 1, 4.

[5]See Annals of the American Academy of Political and Social Sciences, (September, 1941), Vol. 217, "Crime in the United States".

[6]See also paras. 12, 19, 24, *infra*.

[7]See Sutherland, "White-collar Criminality", American Sociological Review, (1940), page 1, at page 8.

[8]Embezzlement is an exception to this.

White-collar crime, it is stated, goes undetected because it "transcends the visibility of ordinary cheating practices of small merchants[1]". It can, however, be gathered from reports of investigating committees or from conversation with intimate friends[2].

Description of white-collar crime.

12. That white-collar crime is essentially connected with social status has been brought out in the following description given by a writer on Criminology[3]:—

> "White-collar crime is most distinctively defined in terms of attitudes toward those who commit it. White-collar crime is definitely made punishable by law. It is convictable behaviour. However, it is generally regarded by courts and by sections of the general public as much less reprehensible than crimes usually punished by our courts, which may be designated "blue-collar crime". Blue-collar crime is the crime of the under-privileged; white-collar crime is upper or middle-class crime. Just what proportion or section of the population must condone this type of behaviour to constitute it as white-collar is not, and perhaps cannot be, clear. Many courts and other authorities clearly distinguish between a man who illegally misrepresents the qualities of his products and a burglar or robber. Yet the very existence of the law penalizing the former type of act indicates an adverse attitude toward it, though ordinarily not of the same degree. The fact that white-collar crime is punished in less degrading ways than "ordinary crime" does not imply that the former is petty. Actually society loses huge sums through white-collar crime. Some of the rackets we described in an earlier chapter are white-collar crimes; some are not. As Sutherland defines the term, most racketeering by officers of a labour union would not be white-collar crime; nor, apparently would the vice racket be so defined. Thus neither in terms of class status, business activity, attitudes, nor degree of seriousness can white-collar crime be wholly separated from other crime. Nevertheless, it is the somewhat distinctive attitudes and policies *toward the offender* in such cases which have been given significance in discussions of white-collar crime. It appears that even outside of business circles, white-collar crime is less reprehensible than ordinary crime, because low-class people often aspire to be white-collar criminals. Or if not, they at least accept the same individualism and the same value of materialism which the middle and upper classes accept. White-collar crime is attractive because it brings material rewards with little or no loss of status.".

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[1]Reckless, The Crime Problem, (1955), page 206.

[2]*Cf.* Sutherland, " Crime in Business ", Annals of the American Academy of Political and Social Science (1941), Vol. 217, at page 113.

[3]Taft and England, Criminology, (1964), pages 200-201.

White-collar crimes in 18th century.

13. Problems similar to white-collar crimes had arisen as far back as the 18th century. The "South Sea Bubble" led to the Bubble Act of 1720[1], which may be cited as example of an effort by the Legislature to deal with fraud on a big scale perpetrated by unscrupulous persons[2-3]. But the varieties of such crimes and their diverse manifestations were seen more acutely after the First World War.

White-collar crimes in England.

14. Certain species of white-collar crime have received special attention in England. One example is, "share-pushing" (victimisation of the public by fraudulent dealings in stocks and shares)[4]. Legislation penalising this mal-practice was enacted in 1939[5-6-7-8].

There are similar provisions in the Company Law in India[9].

15. Another example of legislation relating to white-collar crime in England was the Prices of Goods Act, 1939, under section 1 of which it was unlawful to sell any goods the price of which was regulated, at a price exceeding the authorised price[10].

16. Taxation frauds have been regarded as an important kind of white-collar crimes, and Legislatures in all countries have been constrained to go on adding more and more stringent provisions in the law relating to taxation, as so to bring within their net transactions which, under the pre-existing law, were not taxable. The problem assumed importance in England in the forties. For the present purpose, it is not necessary to discuss in detail the difference between "tax-evasion" and "tax-avoidance"[11]. The former is a breach of the law, while the latter raises only ethical questions.

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[1]The Bubble Act, 1720 (6 Geo. 1, c. 18).

[2]See Gower, Modern Company Law (1957), (1963 Impression), page 27 to 30.

[3]See also Gower in (1952) 68 L.Q.R. 214.

[4]See Report of the Departmental Committee on Share-pushing, appointed by the President of the Board of Trade, (1937), Cmd. 5539.

[5]Prevention of Fraud (Investments) Act, 1939 (2 and 3 Geo. 6 c. 16) later replaced by the Act of 1958 (6 & 7 Eliz. 2 c. 45).

[6]See Gower, Modern Company Law, (1957), (1963 Impression) pages 285-286, for the Act of 1939.

[7]For a summary of important cases on the Act, see Note in (1961) 24 Modern Law Review 781-784 by B.W.M. Downey.

[8]See also analysis in *R.* v. *Russell*, (1953) 1 W.L.R. 77, 79, 81 (C.C.A.).

[9]See section 68 of the Companies Act, 1956, (1 of 1956), punishing false, deceptive or misleading statements, etc., made by any person knowingly or recklessly to induce any other person to buy, etc., shares.

[10]The Act was replaced by the Goods and Services (Price Control) Act, 1941 (4 & 5 Geo. 6, c. 31), which, in its turn, was repealed by the S.L.R. Acts, 1950 and 1953.

[11]See para. 99 *et seq*, *infra*.

17. Other types of activities on which attention has been focussed in England in recent times are restrictive trade practices[1], though the legislation on this subject[2] is not so widely framed as "anti-trust legislation" in the United States of America. Restrictive trade practices.

18. Apart from these statutory provisions[3] there is the common law offence of "conspiracy", in England, the scope and application of which may be wide enough to cover many fraudulent transactions not covered by specific criminal statutes[4]. Conspiracy.

We may quote the observations of Fitzgerald J. in one of the leading cases on conspiracy[5]:—

> "A conspiracy consists in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. By the terms "illegal" and "unlawful", it is not intended to confine the definition to an act that would be in itself be a crime or an offence. They extend to and may embrace many cases in which the purpose of a conspiracy, if effected by one person only, would not be a criminal act; as for instance, if several persons combined to violate a private right, the violation of which, if done by one, would be wrongful but not in itself criminal. If, for instance a tenant withholds his rent, that is a violation of the right of his landlord to receive it, but would not be a criminal act in the tenant, though it would be the violation of a right. But if two or more incite him to do that act, their agreement so to incite him is by the law of the land an offence.".

He further observed, "Conspiracy has been aptly described as divisible under three heads[6]:—

> "where the end to be attained is in itself a crime; where the object is to do injury to a third party or to a class, though if that injury were effected by a single

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[1]For a summary, see Sir David Cairns, "Monopolies and Restrictive Practices" in Ginsberg (Editor). Law and Opinion in England in the 20th century, (1959), page 113 *et seq*. See also "Monopolies, Mergers and Restrictive Practices", (1964) (Cmd. 2299), and Report of the Royal Commission on the Press (1962), (Cmd. 1811).

[2]The Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948; the Monopolies, etc., Commission Act, 1953 (now repealed); the Restrictive Trade Practices Act, 1956; the Re-sale Prices Act, 1964 (c. 58); and the Monopolies and Mergers Act, 1965 (c. 50).

[3]Paras. 14 to 17, *supra*.

[4]See Appendix 30, for a detailed discussion.

[5]*R.* v. *Parnell and others*, (1881) 14 Cox C.C. 508, (Fitzgerald J.) (Irish Queen's Bench Division). See Turner and Armitage, Cases on Criminal Law, (1964), page 173.

[6]This analysis was referred to by Lord Porter in *Crofter Harris Tweed Co.* v. *Veitch*, (1942) 1 All England Reports 142, 171 (H.L.).

individual it would be a civil wrong but not a criminal; and where the object is lawful, but the means to be resorted to are unlawful..... The law of conspiracy is not an invention of modern times. It is part of our common law; it has existed from time immemorial. It is necessary to redress certain classes of injuries which at times would be intolerable, and which but for it would go unpunished.".

19. In the United States of America, the expression "white-collar crime" was made current by Sutherland[1]. Certain other authorities had also pointed out the damage to society from the upper socio-economic groups which exploited the accepted economic system to the detriment of the masses[2-3].

Sutherland's study.

20. In his book "White-collar crime[4]" Sutherland examined the criminal activities of 70 of the biggest corporations in America, and focussed attention on the following *types* of law-breaking by them:—

(1) Restraint of trade.

(2) Misrepresentation in advertising.

(3) Infringement of patents, trade marks and copyrights.

(4) Unfair labour practices.

(5) Frauds in business.

Thereafter, several other studies and reports have come out in the U.S.A. on the subject[5].

Main species of white-collar crime.

21. The main crimes that have attracted attention in the U.S.A. under the head of white-collar crimes may be summarised as follows:—

(*a*) frauds in business, in relation to sale of bonds and investments[6];

(*b*) adulteration of food and drugs, and misleading advertisements[7-8];

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[1]Sutherland, "White-collar Criminality", American Sociological Review (February, 1940), pages 1—12.

[2]See Barnes & Teeters, New Horizons in Criminology (1959), page 41.

[3]See also para. 10, *supra*.

[4]Edwin H. Sutherland, White-collar Crime (1949) (Dryden Press, New York).

[5]E. g. Hartung, "White-collar Crime ; and its significance in theory and practice" (1953) 17 Federal Probation 31.

[6]*Cf.* Barnes & Teeters, New Horizons in Criminology (1959), page 45.

[7]Kallett & Schlink, "100,000,000 Guinea Pigs" (New York, Vanguard, 1932).

[8]Ruth Lamp, The American Chamber of Horrors (New York, Farrar, 1936).

(*c*) mal-practices in the medical profession, such as "illegal sale of alcohol and narcotics, abortion, illegal services to underworld criminals, fraudulent reports and testimony in accident cases, extreme cases of unnecessary treatment, fake specialists, restriction of competition and fee-splitting[1]";

(*d*) crimes by lawyers, such as guiding the criminal or quasi-criminal activities of corporations, twisting of testimony to give a false picture, fake claims (bogus liability in accidents), etc.[2-3];

(*e*) trusts, cartels, combines and syndicates, etc., formed to combat competition, or to raise prices or other wise to interfere with the freedom of trade to the detriment of honest businessmen or the consuming public. This has now become a branch of the law by itself and is usually dealt with under the topic of "Anti-trust legislation";

(*f*) bribery and graft by public officers[4].

Adulteration of food, etc.

22. Adulteration of food and drugs has received extensive consideration in the United States of America[5], along with the question of drug addiction and sale of narcotics, such as opium, and several Acts have been enacted on the subject[6]. The latest of the Acts, the Federal Narcotics Control Act, 1956, besides penalising the addicts[7], also punishes those who handle narcotics for profit and exploitation. For sale of heroin[8] by a person over 18 to a person under 18, death sentence can be awarded under the Act of 1956.

Racketeering (organized crimes) in the U.S.A.

23. Another topic which has received special attention in the U.S.A. is "organized crimes", *i.e.* crimes wherein the traditional criminals join hands with big business for securing ends harmful to the community. Literature on this subject is abundant[9]. This is popularly known as "racketeer-

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[1]Sutherland, "White-collar Criminality", American Sociological Review (February, 1940), Vol. 5, page 1, at page 2.

[2]Barnes & Teeters, New Horizons in Criminology (1959), pages 47 and 48.

[3]Kefauver, Crime in America (1952), page 57.

[4]See "Crime in America" by Esttes Kefauver, Chairman of the Senate Crime Investigating Committee (May, 1950 to May, 1951). (Gollancz) (1952), pages 15, 25, and 55.

[5]See "Federal Food, Drug and Cosmetic Act, (1954) 67 Harward Law Review 633.

[6]See the Harrison Anti-Narcotics Act, 1915 (regarding opium); the Marihauna Tax Act, 1937; and the Federal Narcotics Control Act, 1956.

[7]For a summary, see Barnes & Teeters, New Horizons in Criminology, (1959), page 85.

[8]Heroin, it is stated, is 5 times stronger than morphine, and may lead to criminal behaviour. See Mabel Elliott, Crime in Modern Society, (Harper) (1952), page 173.

[9]For an anthology, see Tyler, Organized Crime in America, (1962), published by the University of Michigan.

ing" (organised conspiracy for exploitation)[1]. Such activities, it is stated, may be indulged in by businessmen, leaders of organised labour, politicians, criminals or even lawyers, but the purpose is exploitation of commerce and the public through circumscribing the right to work and do business. These do not, strictly speaking, fall within "white-collar crime", because the "under-world" takes an active part[2]. They might, however, encourage or give rise to white-collar crimes (for example, corruption in the police).

White-coller crimes by professional people.

24. As regards white-collar crimes by lawyers and other professional people, the following observations of Senator Kefauver[3] are relevant:—

> "In Chicago, too, we gathered evidence of a disturbing phenomenon that we found repeated in other large cities of the country. I refer to the active participation—amounting almost to subsidization—in gang affairs by a certain element of lawyers, accountants, and tax consultants. As Judge Samuel Leibowitz, of Brooklyn, an outstanding jurist, remarked in his testimony at our final hearings many months later, "There are criminal lawyers and lawyer criminals". Judge Leibowitz said it was one thing for a criminal lawyer to defend his client honestly and squarely and to see that he got his day in court according to our laws and our Constitution, but it was "another thing to be in the hire of some gang to advise the gang how to operate, and to be at the beck and call of the gangster or act as his right-hand man". Nation-wide disclosures on this particular problem were so disturbing that the Senate Committee felt it would be desirable for local bar associations everywhere to take a new look at how the canon of ethics supposedly governing conduct of members of the bar was being heeded. On the federal level, we felt it would be wise to tighten up the regulations regarding standards for admission of attorneys permitted to practice before federal courts and other United States judicial bodies.".

Price control laws in U.S.A.

25. The question of violation of regulations relating to prices, rents, and rationing has received detailed consideration in the U.S.A.[4].

Regulations relating to price control were issued in the U.S.A. extensively during and after the Second World War.

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[1]Hostetter and Beesley, " 20th Century Crime ", in (1933) 14 Political Quarterly Review, No. 3, reproduced in Tyler, " Organised Crime in America ", (1962), page 49.

[2]*Cf.* Mabel Elliott, Crime in Modern Society, (Harper) (1952), page 47.

[3]Kefauver, Crime in America (1952), page 57.

[4]See Clinard, "Criminological Theories of Violations of Wartime Regulations ", (1946), American Sociological Review, 258, 260, foot-note 10, and page 264.

The office of Price Administration was the main agency charged with the implementation of these regulations. Apart from criminal prosecutions, action in other forms could be invoked against violators of such regulations in various forms, such as, warning letters, monetary settlements, damage suits, suits for injunction and license suspension proceedings. Damage suits are of three types, first, suit by the Administrator for violation in the course of trade or business; secondly, suit by the Administrator for violation at the retail level; and thirdly, suit by the consumer himself. In the first two cases, money paid as the result of the monetary settlement or suit is not deductible as a business expense for income-tax purpose. The maximum amount of damages is laid down by law.

An interesting feature disclosed as a result of the study of such crimes was, that the whole-sale dealers considered *imprisonment* to be a far more effective penalty than fines[1].

White-collar crimes in affluent society.

26. We have dealt with white-collar crimes at length[2] with reference to the importance which they have assumed in some of the Western countries. We are not unmindful of one important fact, namely, that they are a peculiar feature of an acquisitive and affluent society. Our society is by no means affluent, but it is gradually becoming acquisitive, particularly in the urban areas. While white-collar crime may not exist in this country on the scale on which it seems to exist in England and in America, it is not totally absent. Corruption of administrative officers, evasion of tax (particularly income-tax) by persons who fall in the higher income group, smuggling of goods which are scarce in this country (such as gold, watches and transistor-radio sets) and deliberate breach of foreign exchange regulations, may be cited as instances of white-collar crime in our country.

Further, the problem assumes worse proportions when town populations pass the million mark. The power to influence and the power to corrupt, and all the other evils associated with those powers, may not, at present, exist on the same large scale in India as in other more prosperous countries. But, with rapid urbanisation, these evils are bound to grow in intensity. That there is a marked association between crime and urbanisation is recognised in respect of crime generally[3], and in respect of the crimes with which we are concerned, it must particularly be so.

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[1]See Clinard, "Criminiological Theories of Violations of Wartime Regulations", (1946), American Sociological Review 258, 260, foot-note 10 and page 264.

[2]Paras. 7 to 25, *supra*.

[3]Sutherland and Cressey, Principles of Criminology, (1960), page 156.

Economic Crimes in Soviet Russia

Economic Crimes in Soviet Russia.

27. Mal-practices in connection with business, profession and office, thus, seem to have received special treatment in England[1] and in the United States of America[2]. On the other hand, in Soviet Russia, the subject of economic crimes has received special consideration[3].

28. Many acts which would not be criminal in other countries are regarded as crimes in Soviet Russia. The subject of "economic crimes" has received a most detailed attention in Soviet Russia and in other countries of Eastern Europe. Criminal law is viewed as political weapon and as an instrument of policy[4].

Apart from "counter-revolutionary crimes[5]", (which are of a political nature), acts and types of behaviour like inefficient management, poor work, neglect of duties by an employee, non-performance of contracts and inefficient use of one's property, are penalised. Provisions as to economic crimes have existed for the last 40 years, and recent legislation increasing the penalty for such offences in certain cases and even imposing the death penalty[6], would appear merely to carry on the policy reflected in the earlier provisions.

Important species of economic crimes.

29. The number of "economic crimes" as known to Soviet penal law is large, and some of them, such as "counter-revolutionary crimes" and "crimes against the public administration[7]" seem to partake of a political character.

As these are not relevant for our present purpose, we shall confine ourselves only to the species which are purely of an economic character, of which the following may be noted: --

(i) Manufacturing prohibited products.

The prohibition against manufacture of clothes, underwear, knit goods, hats, leather footwear goods, and articles made of non-ferrous metals, etc., being an essential feature of the economic policy, provisions were enacted to penalise the manufacture, etc., or sale of *such prohibited products*[8].

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[1] Paras. 14 to 18, *supra*.

[2] Paras. 19 to 25, *supra*.

[3] Paras 28 to 33, *infra*.

[4] Gsovski and Grzybowski, Government, Law and Courts in the Soviet Union and Eastern Europe, (1960), Vol. 2, page 937. (This will be hereafter referred to as " G G, Government, etc., in the Soviet Union").

[5] See G & G, Government, etc., in the Soviet Union, pages 947 and 949.

[6] See note "Economic Crimes in the Soviet Union", Journal of the International Commission of Jurists, (December, 1964), Vol. 5, No. 1,. page 3 at pages 6 and 10.

[7] See G & G, Government, etc., in the Soviet Union, pages 947—949s.

[8] G & G, Government, etc.,i n the Soviet Union, page 951.

"Speculation"—purchase and sale of goods and other objects with the intention of making a profit—is punished[1]. (ii) Speculation.

Dissipation by a leaseholder or trustee of legal entity (corporation) of governmental or public property given to him under a contract is punishable. So is failure to perform an obligation arising from a contract made with governmental or public office or enterprise, if, during a civil trial, the malicious character of the failure to perform is established[2]. (iii) Contracts with the Government.

Violation of laws on nationalisation of land, committed in the form of overt or concealed purchase, sale, gift, etc., of plots or land not allowed by law, and other transactions in violation of such laws, are punishable[3]. (iv) Private transaction relating to land.

"Pseudo-co-operative" activities, *i.e.* founding or directing the activities of pseudo-co-operatives (organisations which are disguised under the form of a co-operative in order to secure privileges granted to co-operatives, but which are in fact private enterprises), is punishable[4]. (v) Private business under the disguise of a Co-operative.

Release of products of poor quality, or of products inefficiently completed or released in violation of the established standards, is regarded as an anti-State crime equivalent to sabotage. The directors, chief engineers and chiefs of divisions of technical supervision of industrial establishments are punishable for such offences[5]. (vi) Products of poor quality.

Mismanagement by a person placed at the head of governmental and public offices and enterprises or of those entrusted by them, based upon a *careless or dishonest* attitude to the affairs entrusted, resulting in dissipation or irreparable damage to property of the office or enterprise, is punishable. So is dissipation of governmental or public property, particularly the entry into unprofitable business transactions by a person directing a *governmental* or public office or *enterprise committed* by agreement *with the party to the contract* of such office or enterprise[6]. (vii) Poor management.

Giving faulty weights or measures to customers, using wrong scales or measurement devices or weights, is punishable[7]. (viii) Weight and measures

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[1] Article 154, R.S.F.S.R. Criminal Code, 1960.

[2] G & G, Government, etc., in the Soviet Union, page 955.

[3] G & G, Government, etc., in the Soviet Union, pages 956.

[4] G & G, Government, etc., in the Soviet Union, pages 957 and 958.

[5] G & G, Government, etc., in the Soviet Union, pages 957—958.

[6] G & G, Government, etc., in the Soviet Union, pages 958 and 959.

[6] G & G, Government, etc., in the Soviet Union, page 959.

(ix) Selling goods of inferior quality

Selling goods of inferior quality at the price for those of superior quality is punishable as theft from the customer and fraud of the Soviet State[1].

(x) Excessive prices.

Violating established retail prices for goods of mass consumption in shops, stores, stands, eating places, etc., and concealing from customers the prices of goods indicated in the price list, are punishable as theft from the consumer and fraud of the Soviet State[1].

(xi) Theft of public property.

Theft of public property is dealt with elaborately in Soviet Criminal Law. Broadly speaking, theft of Government property is punishable more severely than theft of "public property" (property of collective farms, co-operatives, etc.), and theft of public property is punishable more severely than theft of private property[2]. Recently, even the *death penalty* has been introduced for large-scale theft of State property or social property committed by dangerous recidivists or persons serving sentences for special crimes[3]. (In fact, even previously under the law of August 7, 1932, misappropriation of goods shipped by rail or water, Government property or property of collective farms and co-operatives was punishable with death. This position continued up to 1947, when the death penalty was generally abolished on 26th May, 1947. From that date, confinement and confiscation of property were substituted for theft of public property[4]).

Death penalty in Russia for certain economic crimes.

30. Since the penalty of death can now be awarded for certain offences in Russia, it may be useful to summarise the important provisions on the subject. The death penalty was abolished in Russia in 1917, re-introduced some months later in 1918, re-abolished in 1920, and again re-introduced in 1920, *i.e.* in the same year. In May, 1947, it was abolished again, but in January, 1950, it was re-introduced for certain serious crimes (enemies of the regime, traitors, spies and *subversive-diversionists*). In 1954, it was extended again to murder under aggravating circumstances. This position was repeated in the General Principles of Criminal Legislation, laid down in 1958. Thereafter, in 1961-62, it was extended to certain economic crimes[4-6].

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[1] G & G, Government, etc., in the Soviet Union, page 959.

[2] G & G, Government, etc., in the Soviet Union, page 960.

[3] Decree of 5th May, 1961, No. 19/207.

[4] G & G, Government, etc., in the Soviet Union, page 960. For the text of the law of 1947, see *ibid*, pages 961 and 962.

[4] See—

(*i*) G & G, Government, etc., in Soviet Union, page 939, text corresponding to foot-notes 39 and 40, pages 940, and 941, para. 5; and

(*ii*) "Economic Crimes in the Soviet Union", (December, 1964), Vol. 5, Journal of the International Commission of Jurists, No. 1, p. 3, at pages 5, 7 and 8.

[5] Generally as to death penalty in Russia, see "law in Eastern Europe, No. 9, Soviet Criminal Law", (Edited by Feldbrugge), (1964), pagese 79, 203—205, 230.

Reasons for imposing death penalty.

31. It has been stated[1], that the extension of the death penalty in 1961 and 1962 to various economic crimes reflects the determination of the Soviet regime to take extreme measures against those who most flagrantly violate the tenets of Communist morality. Some of the salient points that have been emphasised[2] are, that Soviet law—

(*i*) regulates all aspects of economic and social life;

(*ii*) remains a law of planned economy; and

(*iii*) remains a law whose primary function is to discipline, guide, train and educate Soviet citizens to become dedicated members of a collectivized and mobilized social order.

Minimum penalties.

32. An interesting feature of the Soviet Criminal Code which came into force on the 1st January, 1961, is the disappearance of minimum penalties in many cases[3-4].

Some salient points as to the provisions in England, U.S.A. and Soviet Russia.

33. On the basis of the brief discussion attempted above[5], we venture to draw certain general conclusions as to white-collar and economic crimes in the countries concerned.

First, in England and in the U.S.A., an emphasis has been placed on "white-collar crimes" (such as, frauds by corporations, manipulations in the stock exchange, commercial bribery, bribery of public officials, tax frauds, professional and business rackets, etc.). But, in the Soviet Russia and other countries of Eastern Europe, the emphasis placed has been on "economic crimes". In fact, having regard to the social and economic complex of those countries, the importance of white-collar crimes (crimes by persons of the *upper strata*), seems to be limited.

Secondly, the importance attached to each species of white-collar and economic crimes has varied from time to time. While one species of white-collar crime, such as profiteering, assumes importance at one stage, at another stage it might pale into insignificance, and another species of white-collar crime, such as tax fraud, might come into prominence.

Thirdly, there is no common factor binding white-collar crimes as known in the West with economic crimes as emphasised in Eastern Europe.

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[1] Harold Berman, "Soviet Law Reform", Harvard Law Review (March 1963), 929, 948.

[2] Harold Berman, "Soviet Law Reform", Harvard Law Review (March 1963), 929, 930 and 931.

[3] Feldbrugge, "Soviet Criminal Law, The Last Six Years", Journal of Criminal Law, Criminology and Police Science (September, 1963), page 249, 255, righthand column.

[4] For a general view, see Boris S. Nikiforov, "Fundamentals of Soviet Criminal Law", (1960) 23 Modern Law Review 31.

[5] Para. 6—32, *supra*.

Fourthly, there is no common characteristic behind the economic crimes penalised in Eastern Europe, except that they share the common characteristic of all *crimes, namely, acts universally disapproved of by members of the society concerned*[1].

Position in Commonwealth countries.

34. We tried to ascertain, as far as possible, whether provisions of the nature contained in the Soviet Criminal Law[2] are in force in the Penal Codes of Commonwealth countries. For this purpose, we made an attempt to study in detail the Penal Codes of Canada, Australia[3] and New Zealand, and the material available as to certain other Commonwealth countries[4-5]. We were unable to trace such wide and sweeping provisions in the laws of those countries, or in the law of England[6].

Points to be considered—General Observations

Main points to be considered.

35. We now proceed to consider the main points arising from the proposals of the Santhanam Committee. The proposal of the Committee[7] is to add a new chapter to the Indian Penal Code bringing together "all the offences in such special enactments (*i.e.* enactments relating to the offences in question) and supplementing them with new provisions". Thus, it seems to contemplate two classes of changes, namely—

(*i*) *transfer* to the Indian Penal Code of the *existing* provisions relating to the offences in question, contained in other special enactments; and

(*ii*) *addition* to the Indian Penal Code of *new* provisions as to social (and economic) offences.

Addition of new provisions.

36. So far as the question of adding *new* provisions is concerned, no detailed suggestions were forwarded when the matter was referred to us (except the recommendation made by the Santhanam Committee)[8]. But certain suggestions were made in the comments received by us on the proposals under consideration. The important points made in those comments will be considered later in this Report, under each category, at the appropriate place[9].

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[1] *Cf.* Durkheim, Division of Labour in Society (English translation by George Simpson, 1933), page 70, cited in Mannheim, Criminal Justice and Social Reconstruction, (1946), page 167.

[2] Para. 28 to 32, *supra.*

[3] The Criminal law is codified in Queensland, Western Australia and Tasmania.

[4] Sheridan, Malaya and Singapore—The Development of their Laws and Constitution (1961).

[5] S. A. De Smith, The New Commonwealth and its Constitution, (1964).

[6] See also Appendices 19, 20, 26, 28 and 29.

[7] Para. 3, *supra.*

[8] Paras, 1 to 3, *supra.*

[9] See paragraphs 38, 76, 96-97, 120, 125, 136, 138, 144, 164 and 168, *infra.*

37. We shall, later, discuss in detail[1] how far changes in the nature of transfer of existing provisions, as well as addition of new provisions, is necessary and convenient in relation to each of the various classes of offences mentioned by the Committee. But, as to transfer of existing provisions, there are certain points of a general character which we would like to state at the outset. In the first place, the penal provisions contained in various special enactments are, in many cases, linked up with the general structure of those enactments, and take their colour from them. Their transfer to the Indian Penal Code may be inconvenient, if such transfer has the effect of disturbing the whole scheme of those enactments and making them unintelligible or incomplete. Conversely, if transferred to the Indian Penal Code, these provisions themselves would become incomplete, as they would then have to be read without reference to the main provisions of the special enactments. Secondly, their transfer will not only increase the number of sections in the Penal Code and add to its bulk, but also mar its structure[2]. General observations as to proposal for transfer.

38. The correct approach to the problem seems to us to have been well expressed in a comment which we received from one of the High Courts on the proposals under consideration. We quote the relevant portion *in extenso*[3]:— Correct approach.

> "In their Lordships' opinion, the proposal of the Committee to include these anti-social offences in the Indian Penal Code does not appear to be practicable, and, if followed, will create innumerable difficulties, apart from marring the structure of the Penal Code.
>
> Their Lordships further observe, that the Indian Penal Code deals with such acts against persons and their property as are universally accepted as injurious in all civilized societies and (with) acts which offend against the fundamental principles on which (the) existence of human beings as a society rests. These fundamentals are more or less of a permanent nature, and will endure for a long time to come. In their Lordships' view, the offences dealt with in the Indian Penal Code are of a different nature, and have a different content, from social offences, and it would not be proper to include anti-social offences in the Indian Penal Code.
>
> The preamble of the Indian Penal Code also shows that it was intended to be a *general Penal Code* for India. It was never intended, as section 5 of the Act shows, to affect any special or local law by the enactment of the Penal Code. The Opium Act, the Gambling Act and a number of special and local laws were

[1] Para. 92, *et seq*, *infra*.

[2] *Cf*. Para. 38, *infra*.

[3] Punctuation marks have been added at a few places.

and are in force, which not only constitute but also punish some types of acts under circumstances mentioned therein, and that method of dealing with offending acts of a special nature or acts which require to be specially considered and dealt with, has been found to be working satisfactorily. Sometimes, while dealing with particular offences, it has been found necessary to provide for particular procedure or special rules of evidence also. Provisions for special sanction before starting investigation and prosecution, for raising presumption of guilt, for awarding minimum sentences, etc., have been made in some special enactments, *e.g.* Prevention of Corruption Act, Prohibition laws, etc. The Penal Code, besides giving its own general explanations, definitions and general exceptions, divides into and deals with categories of acts constituting offences on *their basic nature, e.g.* offences against the State, against public tranquility, offences relating to public servants, affecting public health and morals, affecting the human body, offences against property, etc. Most of the principal offences defined and made punishable under the Penal Code have, unfortunately, continued to be committed and punished, but, except in a few cases (almost negligible), the occasion to delete any of them as obsolete has so far not arisen. On the other hand, offences of new and complex types have come to the forefront, the nature and the number of the offences constituting the basic structure of the Penal Code remaining unaffected. These offences have now assumed such proportions that it has become necessary to deal with them on a more scientific basis and to incorporate them into the penal law of the land. But, as stated before, such offences *require special treatment and procedure* in their trial, and, in their outer forms, are short-lived, though they reappear in different and perhaps more complicated guises later on. These offences being the outcome of *changed and changing social conditions,* would require repeated legislative attention, and therefore, it would be appropriate if they are made the subject-matter of *special legislation* while the penal law of the land, *i.e.* the Indian Penal Code, should be left substantially in its present form."

Permanent offences and temporary malpractices.

39. As has been pointed out in one article[1], some offences go against the fundamental structure of the society. On the other hand, there are some activities which are regarded as offences because of a temporary dislocation of the economic structure. "Statutory offences mainly belong to the second category. They are intended to counter-act passing phenomena. So long as human life is considered of value--and it be eternally so—, taking away human life would be considered a crime. On the other hand, if things return to

[1] (1964-65) 69 Calcutta Weekly Notes (No. 14), page 57 (8th February 1965 Editorial note).

normal, there will be no necessity for any Guest Control Order or for the matter of that any Control order.".

Example of Guest Control Order cited.

40. As regards the argument that courts attach more gravity to offences mentioned in the Penal Code, it has been stated[1]—"An offence of, say, entertaining more than 100 guests in violation of the Guest Control Order cannot be looked upon by anybody as an offence as heinous as rape, *even if it is enacted in the Penal Code as section 376-A".*

Character of special statutes.

41. Such offences are better left to be dealt with by special and self-contained enactments which supplement the "basic criminal law". We would, in this connection, like to quote the following observations of Stephen[2]:—

> "Before undertaking either of these tasks I must endeavour to define what I mean by the Criminal Law. The most obvious meaning of the expression is that part of the law which relates to crimes and their punishment—*a crime being defined as an act or omission in respect of which legal punishment may be inflicted on the person who is in default either by acting or omitting to act.*
>
> This definition is too wide for practical purposes. If it were applied in its full latitude it would embrace all law whatever, for one specific peculiarity by which law is distinguished from morality is, that law is coercive, and all coercion at some stage involves the possibility of punishment. This might be shown in relation to matters altogether unconnected with criminal law, as the expression is commonly understood, such as legal maxims and the rules of inheritance. A judge who wilfully refused to act upon recognised legal maxims would be liable to impeachment. The proprietory rights which are protected by laws punishing offences against property are determined by the application of those laws. If there were no such crimes as theft, forcible entry, malicious mischief, and the like, and if there were no means of forcing people to respect proprietory rights, there would be no such thing as property by law.
>
> This is no doubt a remote and abstract speculation. The principle on which it depends may be displayed by more obvious and important illustrations. It would be a violation of the common use of language to describe the law relating to the celebration of marriage, or the Merchant Shipping Act, or the law relating to the registration of births, as branches of the criminal law. Yet the statute on each of these subjects contain a greater or

[1] (1964-65) 69 Calcutta Weekly Notes (No. 14), page 57 (8th February 1965 Editorial note).

[2] Stephen, History of the Criminal Law of England, (1883), Vol. 1, pages and 2.

less number of sanctioning clauses which it is *difficult to understand without reference to the whole of the acts to which they belong.* Thus, for instance, it is felony to celebrate marriage otherwise than according to the provisions of certain Acts of Parliament passed in 1823 and 1837, *and these provisions form a connected system which cannot be understood without reference to the common law on the subject.* These illustrations (which might be indefinitely multiplied) show that the definition of criminal law suggested above must either be considerably narrowed or must conflict with the common use of language by including many parts of the law to which the expression is not usually applied.".

42. The observations of Stephen relating to summary offences may also be quoted[1]:—

"Such offences[2] differ in many particulars from those gross outrages against the public and against individuals which we commonly associate with the word crime. It would be an abuse of language to apply such a name to the conduct of a person who does not sweep the snow from his doors or in whose chimney a fire occurs.".

Multiplica-tiion of offen-ces.

43. Recent years have witnessed a growth in the volume of criminal law and the intensive multiplication of offences. Some of the offences with which we are concerned seem to belong to a class which cannot be equated with the class of offences dealt with in the Indian Penal Code. This is an aspect well worth elaboration. We quote the following passage from the Encyclopaedia of Social Sciences[3]:—

'Treason, murder, certain sexual offences and some serious offences against property are fairly constant in the criminal laws of the world, with relatively similar definitions.

In addition to these offences, however, the increasing complexity of social life has led to the creation by the State of a vast number of laws which strike at forms of conduct peculiar to some particular type of social organisation. Roscoe Pound, in his Criminal Justice in America, has found in analysing the criminal laws of Rhode Island that the Revised Public Laws of 1882 defined 50 crimes, while the title of "Crimes and Punishment" of the general laws of 1923 defined 212. More than half of the offences that may be prosecuted by the State and punished by fine and imprisonment or both are contained in special laws

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[1]Stephen, History of the Criminal Law of England, (1883), Vol. 1, page 4.

[2]The reference is to "summary of police offences".

[3]Encyclopaedia Social Sciences (September, 1951 Reprint), Vol. 4 pages 564 to 566 (Contributed by Thornston Sellin).

passed since 1872, dealing with such problems as the protection of workers, the regulation of motor vehicle traffic, the regulation of selling of securities and of merchandise and the enforcement of liquor prohibition laws...."

'Only the most serious offences against the law cause a stigma to be attached to the offender. Were it otherwise, the *psychic burden of criminality carried by the average community today* should be immense, for the multiplication of legal prohibitions has made it difficult for any one of its members to lead a completely law abiding life.'.

Criminal law and Morality,

44. Even as regards acts of an anti-social character belonging to a class which can be regarded as "unethical" it should be borne in mind that every act which is regarded as immoral cannot be made criminal. The question of the relation between law and morality is a vexed one, and we need not enter into a detailed discussion thereof[1]. Stephen's observations on the subject, however, seem to put the subject in a proper perspective, and may be quoted[2]:—

"The first point then to be considered is the nature of the popular and the legal conception of crime in general, their relation to each other and the inference which the existence of that relation suggests as to the nature and objects of punishments.

The great difference between the legal and the popular or moral meaning of the word 'crime' is, that whereas the only perfectly definite meaning which a lawyer can attach to the word is that of an act or omission punished by law, the popular or moral conception adds to this the notion of moral guilt of a specially deep and degrading kind. By a criminal, people in general understand not only a person who is liable to be punished, but a person who ought to be punished because he has done something at once wicked and obviously injurious in a high degree to the commonest interests of society. Perhaps the most interesting question connected with the whole subject is how far these views respectively ought to regulate legislation on the subject of crimes, 'ought', meaning in this instance how far it is for the good of those whose good is considered in legislation that the view in question should be adopted, and 'good' meaning the end which the legislator has in view in his legislation. In other words, the question is, what ought to be the relation between criminal law and moral good and evil as understood by the person who imposes the law?

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[1] For a bibliography, see Devlin, Enforcement of Morals, (1965), pages (xiii) and (xiv).

[2] Stephen, History of the Criminal Law of England, (1883), Vol. 2, pages 76, 77, 78, 79 and 80.

.....In what relation ought criminal law to stand to morality when the effective majority of a great nation legislates for the whole of it, and when there are no other differences of moral standard or sentiment than those which inevitably result from individual differences of opinion and unrestricted discussion on religion and morals?

The answer to this question is not quite simple. In the first place, criminal law must, from the nature of the case, be far narrower than morality. In no age or nation, at all events, in no age or nation which has any similarity to our own, has the attempt been made to treat every moral defect as a crime. In different ages of the world injuries to individuals, to God, to the gods, or to the community, have been treated as crimes, but I think that in all cases the idea of crime has involved the idea of some definite, gross, undeniable injury to some one. In our own country this is now, and has been from the earliest times, perfectly well-established. No temper of mind, no habit of life, however, pernicious, has ever been treated as a crime, unless it displayed itself in some definite overt act. It never entered into the head of any English legislator to enact, or of any English court, to hold, that a man could be indicted and punished for ingratitude, for hardheartedness, for the absence of natural affection, for habitual idleness, for avarice, sensuality, pride, or, in a word, for any vice whatever as such. Even for purposes of ecclesiastical censure some definite act of immorality was required. Sinful thoughts and disposition of mind might be the subject of confession and of penance, but they were never punished in this country by ecclesiastical criminal proceedings.

The reasons for imposing this great leading restriction upon the sphere of criminal law are obvious. If it were not so restricted it would be utterly intolerable; all mankind would be criminals, and most of their lives would be passed in trying and punishing each other for offences which could never be proved.

Criminal law, then, must be confined within narrow limits, and can be applied only to definite overt acts or omissions capable of being distinctly proved, which acts or omissions inflict definite evils, either on specific persons or on the community at large. It is within these limits only that there can be any relation at all between criminal law and morality.

The relation between criminal law and morality is not in all cases the same. (*a*) The two may harmonize; (*b*) there may be a conflict between them, or (*c*) they may be independent. In all common cases they do, and, in my opinion, wherever and so far as it is possible, they ought to harmonize with, and support, and another.".

45. Sometimes, notwithstanding that an act is immoral, it may be necessary to put it outside the criminal law because it is difficult to enforce a law punishing it. The observations of an eminent judge[1] are of interest:— Line of division thin.

> "The line that divides the criminal law from the moral is not determinable by the application of any clear-cut principle. It is like a line that divides land and sea, a coastline of irregularities and indentations. There are gaps and promontories, such as adultery and fornication, which the law has for centuries left substantially untouched. Adultery of the sort that breaks up marriage seems to me to be just as harmful to the social fabric as homo-sexuality or bigamy. The only ground for putting it outside the criminal law is that a law which made it a crime would be too difficult to enforce; it is too generally regarded as a human weakness not suitably punished by imprisonment. All that the law can do with fornication is to act against its worst manifestations; there is a general abhorrence of the commercialization of vice, and that sentiment gives strength to the law against brothels and immoral earnings. There is no logic to be found in this. The boundary between the criminal law and the moral law is fixed by balancing in the case of each particular crime the pros and cons of legal enforcement in accordance with the sort of considerations I have been outlining.'.

46. The same eminent Judge[2] has made the point about the proper function of the criminal law, as compared with the moral law, in these words:— Function of criminal law and moral law compared.

> "I have spoken of the criminal law as dealing with the minimum standards of human conduct and the moral law with the maximum. The instrument of the criminal law is punishment; those of the moral law are teaching, training, and exhortation. *If the whole dead weight of sin were ever to be allowed to fall upon the law, it could not take the strain.*".

47. In the course of our deliberations, we tried to analyse the common characteristics of the offences in question[3]. Many of the offences seem to have the following features in common:— Analysis of anti-social etc. offences.

(*a*) the offences are committed by the upper classes of society;

(*b*) those upper classes themselves set the moral standards of society, and hence a serious view is not taken of these offences;

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[1]Devlin, Enforcement of Morals (1965), pages 21 and 22.

[2]Devlin, Enforcement of Morals (1965), pages 23.

(c) the victims of the offences are unascertainable persons (usually, the State or the community), as contrasted with the majority of the offences under the Indian Penal Code, where, in most cases, the victim is an ascertained individual.

But *all* these *features* are not shared *by each of the offences* (*e.g.* theft of public property and offences relating to taxes). Moreover, some of the offences—*e.g.* theft of public property—are, even now, punishable under the Indian Penal Code.

Analysis of Special Enactments

Analysis of special enactments.

48. What we would like to emphasise is, that most of the *special enactments* dealing with these offences[1] possess some special features, and we proceed to state some of these special features.

These special features are briefly, special penal provisions, provisions modifying *mens rea*, provisions relating to liability of officers of companies, vicarious liability, special rules of evidence, penalties by rules, special powers, special provisions as to sanction, provisions for publicity, and similar provisions which illustrate the special character of the enactments[2].

Special penal provisions.

49. We begin with one feature found in many of the enactments, namely, the existence of special *penal* provisions. These seem to take various shapes—

(a) There may be "Departmental" penalties (penalties which can be imposed by officers of the Department), as in the Income-tax Act and similar Acts, in the Customs Act and in the Stamp Act.

(b) Again, action by way of confiscation of goods can be taken, an example of which is section 3(2) of the Imports and Exports (Control) Act, 1947, read with the relevant provisions in the Customs Act[3].

(c) Even in respect of the traditional penalties (such as imprisonment or fine), some of the special enactments contain special provisions. By way of example, we may refer to provisions relating to continuing offences[4-6], provisions enhancing the powers of Magistrates in respect of fines[6] (for offences under the special enactments), and provisions for enhanced

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[1]Para. 2, *supra*.

[2]See paragraphs 49 to 81, *infra*.

[3]*Cf. F. N. Roy*, v. *Collector of Customs*, A.I.R. 1957 S.C. 648, 650, para. 6.

[4]See section 24 (1)(*iv*), Industries (Development and Regulation) Act, 1951 (65 of 1951).

[5]As to continuing offences, see discussion in *Municipal Council* v. *Rawat Ram*, A.I.R. 1965 Raj, 180.

[6]See section 29A, Industries (Development and Regulation) Act, 1 (65 of 1951).

punishment in respect of subsequent offences, *e.g.* section 16, Prevention of Food Adulteration Act[1]-[2].

(*d*) Then, revocation or amendment of licences may be provided for. An example is section 12(*1*) of the Industries (Development and Regulation) Act,[3] 1951.

(*e*) Lastly, penalties may be provided for, not in the enactment, but in the rules made thereunder. Thus, rules made under the Central Excises and Salt Act, 1944, contain extensive penal provision[4]-[5]-[6]. In our opinion, if certain penal provisions of special enactments are removed while other provisions are allowed to continue in the special enactments, then the integrated scheme of the special enactments would be destroyed without any compensating advantage.

Mens rea modified.

50. It should also be noted, that the enactments relating to some of the offences under consideration modify the requirements of *mens rea*, thus standing in contrast with the Indian Penal Code.

Analysis of kinds of *mens rea*.

51. For the present purpose, it is not necessary to analyse in detail the various special Acts in order to show how the *mens rea*, i.e. "some blameworthy conditions of mind[7]" has been modified. But some broad points may be indicated.

While dealing with *mens rea*, it would be convenient to group[8] the various crimes into four classes—

(*i*) Crimes in which the *mens rea*[9] is found in an intention to commit an illegal act. (General intention).

(*ii*) Crimes in which a particular intention[10] is required (*e.g.* in English Law, burglary is house-breaking by night with *intent to commit* a felony).[11].

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[1]Prevention of Food Adulteration Act, 1954 (37 of 1954).

[2]See *State* v. *Badri*, A.I.R. 1965 Raj. 152, para. 12.

[3]The Industries (Development and Regulation) Act, 1951 (65 of 1951)

[4]*Cf.* also section 30 (3) read with section 24(1)(*iv*), Industries (Development and Regulation) Act, 1951 (65 of 1951).

[5]*Cf. A. A. Beeravoo* v. *Collector, etc.*, (1965) 2 Cr. L. J. 279 (Kerala).

[6]See also para 77 *infra*.

[7]*Cf.* Cave J. in *Chisholm* v. *Doulton*, (1889) 22 Q.B.D. 736, 741.

[8]The grouping is based on that given in Stephen, Commentaries on the Laws of England (1950), Vol. 4, pages 10—12.

[9]Stephen's criticism of the expression "*mens rea*" will be found in his judgment in *R.* v. *Tolson*, (1889) 23 Q.B.D. 168, 185, 187.

[10]"Knowledge" can also be added. *Cf. R.* v. *Hudson*, (1965) 2 W.L.R. 604, 609 (12th March, 1965).

[11]*Cf. Dobbs*, (1770) 2 East P.C. 513, discussed in Perkins Criminal Law (1957), page 672.

(*iii*) Crimes in which negligence[1] will suffice (*e.g.* management of vehicles in public streets);

(*iv*) Crimes in which the requirement of *mens rea* is reduced to a minimum (*i.e.* abducting a girl under 16 from her parents, though the girl is believed to be above 16)[2].

Strict liability.

52. But, beyond these examples[3], lie the cases where the legislature has absolutely forbidden the commission of certain acts under penalty of fine (or imprisonment in default of payment of fine), apart, altogether from the question of *mens rea*[4]. That the liability so created is of a quality different from that attaching to ordinary offences requiring *mens rea* is now well-recognised by the case-law and extensive literature that has grown around these offences. It is not necessary to deal with these offences of "strict liability" at length. As has been said, strict responsibility "has been with us so long that it has become accepted as a necessary evil"[5]. At the same time, a brief discussion is not out of place.

53. In this connection, we may quote the following observations of the Privy Council in a recent case[6]:—

> "Where the subject-matter of the statute is the regulation for the public welfare of a particular activity—statutes regulating the sale of food and drink are to be found among the earliest examples—it can be and frequently has been inferred that the legislature intended that such activities should be carried out under the conditions of strict liability. The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of *mens rea*. Thus sellers of meat may be made responsible for seeing that the meat is fit for human consumption and it is no answer for them to say that they were not aware that it was polluted. If that were a satisfactory answer, then as Kennedy, L. J., pointed out in *Hobbs*

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[1]For the present purpose, it is assumed that negligence is a type of *mens rea*. For a contrary view, see Glanville Williams, Criminal Law—The General Part, (1961), pages 102 and 262. For a comprehensive discussion, see P. J. Fitzerald, "Crime, Sin and Negligence" (1963) 79 L.Q.R. 351, 361.

[2]*R.* v. *Prince*, (1875) L.R. 2 C.C.R. 154.

[3]Para. 51, *supra*.

[4]*Cf.* Stephen, Commentaries on the Laws of England (1950), Vol. 4, page 13.

[5]P. J. Fitzgerald, in Block Review of Colin Howard, Strict Responsibility, (1964) 7 Lawyer 41.

[6]*Lim Chin Aik* v. *The Queen*, (1963) A. C. 160 ; (1963) 1 All E.R. 223, 228 (P.C.).

v. *Winchester Corporation*[1], the distribution of bad meat (and its far-reaching consequences) would not be effectively prevented. So a publican may be made responsible for observing the condition of his customers[2].".

In other words, these are cases in which—"Intention to commit a breach of the statute need not be shown. The breach *in fact* is enough[3-4].".

Knowledge of illegality whether relevant.

54. The passages quoted above[1] have been discussed at length in a recent decision of the Supreme Court of India[5-6] which also deals with the question, how far *mens rea* in the sense of actual knowledge that the act done by the accused was contrary to the law, may be requisite. It was pointed out there, that "starting with an initial *presumption* in favour of the need for *mens rea*, we have to ascertain whether the presumption is overborne by the language of the enactment, read in the light of the objects and purposes of the Act, and, particularly, whether the enforcement of the law and the attainment of its purpose would not be rendered futile in the event of such an ingredient being considered necessary".

On the other hand, where it cannot be said that the object of the Act would be defeated if *mens rea* is read as an ingredient, courts would be slow to dispense with it[7].

English case on *mens rea* under particular statute.

55. Examples of reduction or elimination of *mens rea* are abundant in the case law in England regarding the Food and Drugs Act,[8-9-10-11] and the Weights and Measures Acts[12]

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[1]*Hobbs*, v. *Winchester Corporation*, (1910) 2 K.B. 471.

[2]*Cundy* v. *Le Cocq*, (1884) L.R. 13 Q.B.D. 207.

[3]*Cf.* Lord Wright in *McLeod* v. *Buchanan*, (1940) 2 All. England Reports 179, 186 (H.L.) (Case under s. 35, Road Traffic Act, 1930, requiring insurance against third party risks).

[4]See also para 59, *infra*.

[5]Paragraph 53, *supra*.

[6]*State of Maharashtra* v. *M. H. George*, A.I.R. 1965 S.C. 722, 736, 737, paragraphs 29 to 32, and 34 (Majority Judgment).

[7]*Cf. Nathulal* v. *State of M. P.* A.I.R. 1966 S.C. 43, 45, para. 4; 1966 Cr. L. J. 71, 73.

[8]Williams, Criminal Law, The General Part, (1961), page 218, para. 77.

[9]Craies, Statute Law (1963), pages 540 and 545.

[10]Halsbury, Laws of England, 3rd Edn., Vol. 17, pages 484, 485, para. 900, 901, and page 506, para. 937.

[11]See case-law reviewed in *Hobbs, etc.*, v. *Winchester*, (1910) 2 K.B. 471, 478, 480.

[12]*Anglo-American Oil Co. Ltd.* v. *Manning* (1908) 1 K.B. 536, 541, Channell, J.).

Judicial construction in England of certain enactments passed for protection of the revenue also furnishes similar examples.[1]-[2]

56. In India, a striking example of modification of the ordinary rule regarding *mens rea* is the Prevention of Food Adulteration Act[3], section 19(1) of which provides, that (subject to certain qualifications), it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food, to allege merely that the vendor *was ignorant* of the nature, substance or quality of the food sold by him, or that the purchaser, having purchased any article for analysis, was *not prejudiced* by the sale[4]. It has been held[5], that under this Act even the sale of any article to a particular customer on the understanding that the customer is to use it only for animals, is punishable. In England also, provisions of the corresponding statutes are given a wide interpretation[6].

Offences under the Customs Act.

57. Another example of a provision dispensing with *mens rea* is section 167(12A) read with section 52A of the (old) Sea Customs Act[7]. The net result of these two provisions was, that if a vessel constructed, adapted, etc., for the purpose of concealing goods, under section 52A, entered, etc., within the limits of India, the vessel would be liable to confiscation. The master of the ship was also liable to a penalty not exceeding rupees 1,000. It has been held[8], that having regard to the fact that this sub-section, as contrasted with other sub-sections, did not use the word "knowingly", etc., and having regard to the fact that importation of the requirement of *mens rea* would nullify the object of section 52A (to put an end to illegal smuggling), the prohibition must be regarded as *absolute*. The guilty mind could rarely be established against the owners of vessels which are travelling on the high seas, and it may be difficult to prove the guilty knowledge even of the master of the ship. If absence of such knowledge was allowed to be pleaded as a defence, the owners and the master could very well plead that the alleged alteration, etc. was made without their knowledge, and it will be almost impossible to establish *mens rea* in such cases.

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[1]*C.f. Davies* v. *Harvey,* (1874) L.R. 9 Q.B. 433.

[2]For an analysis which has now become classic, see Wright, J.'s judgment in *Sherras* v. *De Rutzen,* (1895) 1 Q.B. 918, 921.

[3]The Prevention of Food Adulteration Act, 1954 (37 of 1954).

[4]See *Mangaldas* v. *State of Maharashtra* A.I.R. 1966 S.C. 128, 133, para. 14.

[5]*P. P.* v. *Palanisami,* A.I.R. 1965 Mad. 98, 99 para. 3 (Ramakrishnan J.).

[6]The English cases are cited in Kenny, Outlines of Criminal Law (1962), page 42.

[7]See, now section 115 (1)(*a*), Customs Act, 1962 (52 of 1962).

[8]*Indo-China Steam Navigation Co.* v. *Jasjit Singh,* A.I.R. 1964 S.C. 1140, 1150, 1153, para. 24 and 33.

58. A recent decision of the Supreme Court[1] virtually establishes the same position in respect of offences under the Foreign Exchange Regulation Act, 1947[2]. Offences under the Foreign Exchange Act.

59. Of course, the question whether the liability under a statute is absolute, is ultimately one of construction of the particular statute, and the answer will depend on the language employed in the statute[3], the *policy* behind it[4], and how far enforcement of the statute would suffer by adherence to the doctrine of *mens rea*[5].

The examples cited above are merely intended to show that in relation to some of the enactments relating to the offences in question, it would be proper to say, that they fix their attention on the *acts themselves*, irrespective of the knowledge or intention[6].

60. The above discussion[7] will show, that it cannot be asserted that all the eight classes of offences with which we are concerned in this Report[8] stand on the same footing with reference to *mens rea*. In fact, the offences seem to belong to four different categories. First, there are offences in respect of which *mens rea* is undoubtedly required (such as theft of public property). Secondly, there are offences which, though requiring *mens rea*, possess a special character of their own (*e.g.* many offences falling under the category of black-marketing). Thirdly, there are offences which can, with a fair measure of accuracy, be described as offences of strict liability (such as, some offences regarding food and drugs)[9]. And, fourthly, there are acts in respect of which their moral culpabiliy is a matter of controversy (*e.g.* tax avoidance)[10]. Classification of offences in question with reference to *mens rea*.

61. We may, in this connection, also refer to certain special provisions concerning companies. The subject of Companies.

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[1]*State* v. *M. H. George*, A.I.R. 1965 S.C. 722, para. 40, 41 (May) (Reviews case-law).

[2]The Foreign Exchange Regulation Act, 1947 (7 of 1947).

[3]*Cf.* Craies, Statute Law (1963), page 539.

[4]*Cf. Mousell Brothers, Ltd.* v. *L. & N. W. Railways.* (1917) 2 K.B. 836, 845 ; (1916-17) All E.R. Rep. 1101, 1106 (per Atkin) J.).

[5]*Cf. Lim Chin Aik* v. *The Queen*, (1963) A.C. 160 ; (1063) 2 W.L.R. 42 ; (1963) 1 A.E.R. 223, (P.C.) ; and note thereon in (1963) 26 Modern Law Review 446.

[6]See also para 53, *supra*.

[7]Para. 50 to 59, *supra*.

[8]Para. 2, *supra*.

[9]See also para. 73, *infra*.

[10]*Cf.* paras. 100—111, *infra*.

criminal liability of corporations is interesting one[1-2], and we need not, for the present purpose, enter into a detailed discussion[3] of the subject.

The subject has been discussed in detail in England[4-5-6-7].

In India, the point was referred to, but not decided, in one case before the Supreme Court[8].

The question has recently been discussed in a Bombay case[9].

Liability of officers of companies.

62. But the provisions that deserve especially to be mentioned in the present context are those which (subject to certain qualifications), treat *directors* and *officers* of the company as liable for the offences committed by the company.

63. An example of such a provision is section 17(*1*) of the Prevention of Food Adulteration Act[10-11], quoted below:

> "17(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
>
> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.".

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[1]See Halsbury, 3rd Edn., Vol. 10, page 281, para. 521 ; and Vol. 6, pages 440 to 442, paras. 853 and 854, dealing wih the criminal liability of the companies and also with the criminal liability of officers, particularly page 441, footnote (*f*).

[2]See also Gower, Modern Company Law, (1957) (1963 Impression), pages 137 to 138.

[3]In England, the leading case is *R.* v. *I. C. R. Haulage*, (1944) K.B. 551 ; (1944) 1 All Eng. Rep. 691, 693, (C.C.A.).

(Prosecution of company for common law conspiracy to defraud).

[4]Welsh, "Criminal Liability of Corporation" (1946) 62 L.Q.R. 345.

[5]Russell on Crime, (1964), Vol. 1, page 96.

[6]Kenny, Outlines of Criminal Law, (1962), page 70, para. 50.

[7]Glanville Williams, Criminal Law, The General Part, (1961), page 853, *et seq.*

[8]*Motipur Zamindari Co.* v. *State of Bihar*, (1953) S.C.R. 720 ; A.I.R. 1953 S.C. 320, 323, para. 9.

[9]*State of Maharashtra* v. *Syndicate Transport Co.*; A.I.R. 1964 Bom. 195, 200, para. 17. (Paranjpe J.).

[10]The Prevention of Food Adulteration Act, 1954 (37 of 1954).

[11]*Cf. P. P.* v. *K. R. Cooperative Milk Society*, A.I.R. 1964 Mad. 301.

Similar provisions are found in many English Acts[1].

64. As has been observed[2], "Recent years have seen a further development whereby the rule that the acts of directors are treated as those of the company is, in effect, applied *in reverse*, so that the acts of the company are treated as those of all its directors. Many modern statutes and regulations provide that if an offence is committed by a company, every director or officer shall be guilty of that offence unless he proves that it was committed without his consent and that he exercised due diligence to prevent its commission". Such provisions are so worded as to stop the loophole revealed by certain judicial decisions[3].

65. The practice of inserting such provisions[4] has not escaped criticism. The comment of Upjohn J. in one case may be referred to. There the statutory provision in issue was[5] as follows:—

> " ....Where an offence under this Act has been committed by a body corporate (other than a local authority), every person who at the time of commission of the offence was a director, general manager, secretary or other similar officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances".

The following observations were made on this provision[6]:—

> "First of all, I have to bear in mind that this is a penal statute. It indeed, I suppose, represents the high-water mark of the Parliamentary *invasion of the traditional rights of the subjects of this realm.* Not only does it impose upon offenders substantial penalties —no objection could be taken to that—, but what is so serious from the point of view of the subject is, that where a body corporate has been found to be an

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[1]For English Acts containing similar provisions, see Glanville Williams, Criminal Law, The General Part, (1961), pages 866, *et seq.*

[2]Gower, Modern Company Law, (1957), (1963 Impression), page 138.

[3]E.g. *Dean* v. *Hiesler*, (1942) 2 All. Eng. Rep. 340 (person not *duly appointed* as a director not liable under Regulation 91 of the Defence) (General Regulations).

[4]Para. 62, *supra.*

[5]The Borrowing (Control and Guarantees) Act, 1946. Schedule para. 3 (4).

[6]*London and Company Commercial Properties Investment, Ltd.*, v. *Attorney General*, (1953) 1 Weekly Law Reports, 312, 318, 319, (Ch. D) Upjohn J.).

offender, then every director, general manager, secretary or other similar officer of the body corporate, including a person who was purporting to act in those capacities, is deemed to be guilty unless he proves that the offence was committed without his consent or connivance, thereby reversing the usual and traditional rule of English law that a man is innocent until he is proved guilty. But not only that; for proof that he is innocent will not avail an accused person, because he must further show that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity, and in all the circumstances. However, that is what Parliament has thought fit to enact, and I abide, of course, by it. Nevertheless it is what Mr. Lindon described as a highly penal statute.".

Vicarious liability.

66. The question of vicarious penal responsibility also falls to be considered, in this context. The rule at common law is that (subject to certain exceptions), a master is not vicariously responsible for the crimes of his servants[1]-[2]-[3].

Modification by Statute.

67. This common law rule[4] may undergo a modification in relation to special enactments. The liability so imposed may be vicarious either in relation to the *actus reus*, or in relation to the *mens rea*. The method by which such modification is achieved is two-fold. There may be *statutory provisions* creating vicarious responsibility, by using words such as "no person shall either *by himself or by any servant* or agent" do some act[5]-[6].

68. Besides such statutory modifications[7], there may be a modification as a result of judicial construction. A statute may be so construed as to render a person criminally liable for the acts of his servants; and, such a construction might

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[1]Kenny, Outlines of Criminal Law (1962), pages 38, 42, 43, 48 and 49.

[2]See discussion in Glanville Williams, Criminal Law—The General Part, (1961), pags 267 to 269, para. 92.

[3]See S. Prevezer's article in 16 Modern Law Review 236, for a general discussion.

[4]Para. 66, *supra*.

[5]See examples of English Acts cited in Glanville Williams, Criminal Law, The General Part, (1961), page 269, footnotes.

[6]Compare section 9B, Opium Act (1 of 1878), as inserted by Bengal Act 5 of 1933.

[7]See para. 67, *supra*.

be *more easily* adopted in relation to special enactments having regard to their subject-matter[1-2-3-4].

This seems to be particularly so in the case of "public welfare offences"[5-6].

Vicarious liability for statutory offences is, in many cases, justified on the principle, that if a master chooses to delegate the conduct of his business to a servant, then, if the servant in the course of conducting the business, does an act which is *absolutely prohibited*, the master is liable[7]. On the other hand, where intent is a necessary element, as in *attempt*, the doctrine of vicarious liability may be negatived[8]. The link between vicarious liability and absolute prohibition can be seen in the following observations:—

> "A master who is not *participant* in the offence can only be liable criminally for the acts of his servant if the statute which creates the offence does so in terms which impose *an absolute prohibition*."[9]

The following observations of Channell J. with reference to a case under the Weights and Measures Act, 1878[10], illustrate this aspect[11]:—

> "[The Act] is within the class of statutes under which persons may be convicted for acts of their servants in respect of which they are not in any real sense culpable. *Mens rea* is not an element in the

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[1]For the position in England, see—

(*i*) Cross and Jones, Introduction to Criminal Law, 1964, pages 96, 98 ;

(*ii*) Kenny, Outlines of Criminal Law (1962), pages 38, 42 and 48, paras. 28, 32 and 35.

(*iii*) Glanville Williams, Criminal Law, the General Part (1961), pages 270—285.

[2]For the position in Australia, see—

(*i*) *Proudman* v. *Dayman* and the judgement of Dixon J. therein, (1953) 67 Commonwealth Law Reports, 536, 540 ;

(*ii*) *Thomas* v. *R.* (1937) 59 Commonwealth Law Reports 279, 300, 305 (Dixon J.) ;

(*iii*) Note by Colin Howard in 67 L.Q.R. 547 ; and

(*iv*) Colin Howard, Strict Responsibility (1963), Chapter 7.

[3]For the position in America, see Perkins Criminal Law, (1957), pages 695 to 697.

[4]For Indian case Law see *Uttam Chand* v. *Emp.* A.I.R. 1945 Lah 238, 246 to 248 (F.B.).

[5]See Glanville Williams, Criminal Law, The General Part (1961), page 282, middle.

[6]See also *Yeandel* v. *Fisher* (1965) 3 W.L.R. 1002, 1007, (per Lord Parker C.J.).

[7]*Cf. Barker* v. *Levinson* (1951) 1 K.B. 342 ; (1950) 2 All E. R. 825, 827 (Lord Goddard C.J.).

[8]*Gardner* v. *Akeroyd*, (1952) 2 All Eng. Reports 306, 310, 311.

[9] *Gardner* v. *Akeroyd* (1952) 2 All E.R. 306, 310 (per Lord Goddard C.J.).

[10]The Weights and Measures Act, 1878 (41 and 42 Vict. c. 49, section 25).

[11]*Anglo-American Oil Co., Ltd.* v. *Manning* (1908) 1 K.B. 536, 541.

offence..... The offence is within that class where the legislature has *absolutely prohibited* certain acts being done, with the consequence that if they are done—although by a servant of the employer—done in any sense in the course of the employment, so that for some purposes the maxim *qui facit per alium, facit per se* applies—the employer may be convicted although he is not in any way morally culpable.".

69. As was observed by the House of Lords in a recent case[1], the number of statutes which may give rise to the question of vicarious criminal liability is "regrettably great", and the language "very far from uniform". But the effect of the numerous cases on the subject appears to be, that (subject to certain exceptions), where the scope and purpose of the relevant Act is the maintenance of proper and accepted standards of public order in licensed premises or other comparable establishments, there arises under the legislation what *Channell J.*[2] called a *"quasi-criminal offence"*, which renders the licensee or proprietor criminally liable for the acts of his servants, *though there may be no mens rea on his part.*

70. An elaborate analysis of the methods whereby the statute itself may create vicarious liability is found in the judgment of Lord Morris[3]:—

> "It is open to Parliament to provide that a particular act is wrongful and that a person who does the act is guilty of an offence. In general our criminal law requires that there should be *mens rea* in order to establish guilt. (*i*) Parliament may, however, enact that *mens rea* is not necessary. There may be strict liability. (*ii*) So also it might be enacted that a person is guilty of an offence if his servant or agent does some act and does it with *mens rea.* It might be enacted that a person is guilty of an offence if some other person not his servant or agent does some act and does it with *mens rea.* It might be enacted that a person is guilty of an offence if there is *mens rea* either in him or in the person doing the act. (*iii*) It might be enacted that a person is guilty of an offence if an act is done by some other person even though there is no *mens rea* in any one.".

71. This aspect of special enactments creating "quasi-criminal offences" has been thus put by Lord Devlin[4]:—

> "The first distinguishing mark of the *quasi-criminal* law then, is that a breach of it does not mean that the

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[1] *Vane* v. *Yiannopoullos*, (1964) 3 weekly Law Reports, 1218, 1228 (H.L.) (per Lord Evershed).

[2] See para. 72, *infra.*

[3] *Vane* v. *Yiannopoullos*, (1964) 3 Weekly Law Reports, 1218, 1230 (H.L.) (Per Lord Morris of Borth-y-Gest). (Numerals indicating items added).

[4] Devlin, Enforcement of Morals, (1965), page 30.

offender has *done anything morally* wrong. The second distinguishing mark is that the law frequently does *not care whether it catches the actual offender or not.* Owners of goods are frequently made absolutely liable for what happens to the goods while they are under their control even if they are in no way responsible for the interference; an example is when food is contaminated or adulterated. Likewise, they may be made liable for *the acts of their* agents even if they have expressly forbidden the act which caused the offence. This sort of measure can be justified by the argument that it induces persons in charge of an organisation to take steps to see that *the law is enforced* in respect of things under their control. In some of our colonies where the police force is sparse and the population scattered, and the detection of crime exceptionally difficult, the law provides for imposing a collective fine on a village where there has been disorderly behaviour. That helps to ensure that the inhabitants will keep order among themselves. In England a more refined form of *vicarious liability* prevails. The majority of *quasi-criminal* offences are committed in the course of trade or commerce, and the fines that are imposed in respect of them fall upon the shareholders of a limited company or the proprietors of the business.".

Vicarious liability—an aspect of strict liability.

72. Really speaking, vicarious liability in this context is an aspect of strict liability. As has been observed[1], "By the general principles of criminal law, if any matter is made a criminal offence, there is imported into it that there must be something in the nature of *mens rea.* Therefore, in ordinary cases a corporation cannot be guilty of a criminal offence, *nor can a master be liable criminally* for an offence committed by his servant. But there are exceptions to this rule in the case of *quasi-criminal offences*, as they may be termed—acts forbidden by law under a penalty, possibly even under the penalty of imprisonment, at any rate in default of payment of a fine—because the legislature thought it so important to prevent the act being committed that it forbade it *absolutely* to be done in any case. It seems to me that exactly the same principles apply to a corporation doing such a thing. If it does an act which is *absolutely* forbidden it is liable for a penalty.".

Object of the analysis regarding *Mens rea.*

73. The above analysis of *mens rea*[2], and vicarious criminal liability[3], is not intended to imply that all the enactments dealing with the eight categories of the offences

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[1] *Pearks, Gunston and Tee Ltd.* v. *Ward*, (1902) 2 K.B. 1, 11 ; (1902) A.E.R. Reprint 228, 232 (per Channell, J.).

[2] Para. 50 to 60, *supra.*

[3] Para. 66 to 72, *supra.*

which are the subject-matter of this Report[1], create offences of "strict liability". Many of them do require *mens rea*[2]. The analysis is only intended to bring out the position, that at least in respect of some of them, there has been a modification of *mens rea*.

The analysis is also intended to demonstrate, that statutes creating new crimes represent the attempts of the Legislature to give effect to the criminal policy *of the moment*. "The Legislature is therefore primarily concerned to find the best method of dealing with the *particular* mischief which it is, at that moment, seeking to repress, and its decisions, aimed at a narrow target, are not as a rule reached by any careful regard for *general principles of an abstract kind*"[3].

Further, it will also show, that "as things are, *the statutory crimes*, as a whole mass, cannot be brought under a simple schemes of general principles of criminal liability"[3].

Representing, as they do, efforts of the Legislature to repress anti-social conduct of a particular variety prevalent at the particular moment when the Legislature is confronted with the problem, these enactments, therefore, may not fit in with the Scheme of the Penal Code. A synthesis of the principles on which most of the crimes in the Penal Code are based (on the one hand), and the principles on which some of the crimes dealt with by these special enactments are based (on the other hand), would be difficult to achieve. In so far as *mens rea* is eliminated or modified, these special offences are "quasi-criminal[4]" rather than criminal.

Special rules of evidence.

74. Besides provisions modifying *mens rea*[5], and similar provisions there are special rules of evidence laid down in respect of many of the offences in question. An example is section 14 of the Essential Commodities Act[6], which provides that where a person is prosecuted for contravening any order made under section 3 (of the Act), being an order which prohibits him from doing any act or being in possession of a thing, without lawful authority or without a permit, licence or other document, the burden of proving that he had such authority, permit, licence, or other document *shall be on him*[7].

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[1]Para. 2, *supra*.

[2]See para. 60, *supra*.

[3]Russel on Crime, (1964), Vol. 1, page 65.

Cf. Mousell v. *L. N. W. Rly. Co.* (1917) 2 K.B. 836 ; (1916-17) All E.R. Rep. 1101, 1106, (see judgment of Viscount Reading C.J.).

[5]Para. 50—60, *supra*.

[6]Section 14, Essential Commodities Act, 1955 (10 of 1955).

[7]For an exhaustive discussion of statutory reversals of onus, see Glanville Williams, Criminal Law, The General Part (1961), page 896, *et seq.* para. 292 and page 867, para. 284.

75. Another familiar example of a special rule of evidence is section 123 of the Customs Act[1], which applies to "gold, diamonds, manufactures of gold or diamonds, watches and other notified goods[2]". Under this section, where such goods are seized under the Act [section 110 read with section 2(34)], in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods *shall be on the* person from whose possession they were seized[3].

Importance of delegated legislation in relation to statutory offences.

76. It should, next, be noted, that many of the enactments relating to the offences in question cannot be worked without delegated legislation on a large scale contemplated by those enactments. This aspect has been emphasised in one of the comments received by us on the proposals under consideration[4]. We quote the relevant portion:—

> "The Indian Penal Code is an enactment which enumerates and defines a series of offences against the State, society in general, the human body and property, besides providing for punishment for each of these offences. Even the codified social offences like those relating to public tranquility, elections, all offences against public justice, religion, etc., are capable of an all-time definition. The Code does not provide *any delegation of legislative authority* to the executive *by way of rule-making powers to vary the definitions of these offences.* Structurally, the Code is quite different from the various other enactments like the Essential Commodities Act, Company Law, Industries (Development and Regulation) Act and legislation concerning Income Tax, Customs, Excise, Import and Export, etc., which can, in general, be called social and economic laws. Generally speaking, these enactments, unlike the Indian Penal Code, do not give complete definitions of offences. These enactments, besides stating certain social objectives, *incorporate vast enabling powers to the executive to make rules or issue orders or directions to implement the objectives in a given situation.* Contraventions of these rules, orders and directions would amount to offences which are made punishable under the parent enactments. It is seen that Government and its officers, exercising delegated authority, can *periodically change the ingredients of* what can be social and economic offences, depending on the exigencies and needs of the situation, by virtue of the delegated legislative powers vested in them. With this structural

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[1]The Customs Act, 1962 (52 of 1962).

[2]This corresponds to old section 178A, which was enacted in pursuance of the recommendations made by the Taxation Enquiry Commission, (Report Vol. 2, pages 320 and 321).

[3]See *Babulal* v. *Collector of Customs*, A.I.R. 1957 S.C. 877, 880.

[4]S. No. 146 in the Law Commission's file.

difference, it would be very difficult to define, codify and incorporate what can be social and economic offences in the Indian Penal Code. For illustration, we may examine black-marketing, hoarding, trafficking in licences and permits, etc. The question of black-marketing arises only when the price of any commodity is fixed statutorily. Similarly, a person can be said to hoard any article and thus commit an offence only when he hoards more than what he is permitted to, under the law. Necessarily, black-marketing and hoarding cannot take place in respect of a commodity when its supply position is comfortable, and when, as a result no restrictions are placed. Such restrictions are usually imposed, when necessary, *under specific enactments,* and the circumstances of the case are bound to vary with *the commodity* and the position prevailing at the time. Trafficking in licences and permits takes place when these are transferred without the permission of the competent authority though such transfers are prohibited by the law, or when a premium is charged on such transfers in spite of a prohibition under the law.

Here also the circumstances of the case and the severity of the anti-social activity vary with the different classes of licences and permits, necessitating punishments varying in severity.".

Provisions are left to statutory rules and orders, because varied and recurring action by way of subordinate legislation is required, particularly in connection with essential commodities. The following points seem to be worthy of notice:—

(*a*) It often becomes necessary to issue more than one order under an Act. By way of illustration, we may refer to the large number of orders issued in connection with control of sugar[1-2-3].

These were issued under the Essential Commodities Act. In 1963, an order on the subject[4] was issued under the Defence of India Rules, 1962. Reference may also be made to orders issued under the Sugar (Regulation of Production) Act[5].

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[1]The Sugar (Control) Order, 1955. (S.R.O. 1862-Ess. Com., Sugar, dated the 27th August, 1955). See *Diwan Sugar etc. Mills* v. *Union of India,* (1959) 2 S.C.R. (Supp) 123 ; A.I.R. 1959 S.C. 626.

[2]The Sugarcane (Control) Order, 1955, (S.R.O. 1863—Ess. Com. Sugarcane, dated the 27th August, 1955).

[3]The Sugarcane Pressmud Control Order, 1959 (G.S.R. 551/Ess. Com/Press-mud, dated the 29th April, 1959).

[4]The Sugar (Control) Order 1963. (GSR 676, dated the 17th April, 1963).

[5]The Sugar (Regulation of Production) Act, 1961 (55 of 1961).

(b) Even more than *one Act* may have to be enacted to deal with one commodity, *e.g.* sugar [1-2].

(c) Changing circumstances require frequent amendments in statutory rules and orders. Thus, the Inter-Zonal Wheat Movement Control Order, 1957[3] was, between 1957 and 1961, amended seventeen times, before it was rescinded[4].

Particulars of the amendments are given in the footnote[5].

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[1]See, for example—

(*i*) the Sugar (Regulation of Production) Act, 1961 (55 of 1961);

(*ii*) the Sugar Export Promotion Act, 1958 (93 of 1958);

(*iii*) the Sugarcane Control (Additional Powers) Act, 1962 (39 of 1962);

(*iv*) the Sugarcane Act, 1934 (15 of 1934), which has been repealed in some States by local Acts ;

(*v*) section 4, Sugar (Special Excise Duty) Act, 1959 (58 of 1959).

[2]For history of some of the laws regarding sugar, see *Tika Ramji* v. *State*, (1956) S.C.R. 393 ; A.I.R. 1956 S.C. 676.

[3]The Inter-Zonal Wheat Movement Control Order, 1957, (S.R.O. 1986, dated the 13th June, 1957), (Gazette of India Extraordinary, Part II, s. 3, page 1985, dated the 13th June, 1957).

[4]The Order was rescinded by S.R.O. 503, dated the 5th April, 1961. A fresh order—the Inter-Zonal Wheat and Wheat Products (Movement) Control Order, 1964—was issued later (GSR 511 dated the 23rd March, 1964).

[5]The notifications amending the orders were—

SRO. 2464, 27th July, 1957.

SRO. 2630, 14th August, 1957.

SRO. 4043, 14th December, 1957 (published on 21-12-1957).

SRO. 399, 25th January, 1958 (published on 1-2-58).

GSR. 346, 5th May, 1958 (published on 10-5-58).

GSR. 242, 15th April, 1958.

GSR. 609, 12th July, 1958.

GSR. 625, 12th July, 1958 (published on 19-7-58).

GSR. 171, 7th February, 1959.

GSR. 347, 18th March, 1959.

GSR. 641, 27th May, 1959.

GSR. 925, 29th July, 1959 (published on 8-8-59).

GSR. 121, 21st January, 1960 (published on 30-1-60).

GSR. 1117, 20th September, 1960 (published on 24-9-60).

GSR. 1407, 24th November, 1960.

GSR. 2, 3rd January, 1961.

GSR. 35, 7th January, 1961.

(*d*) Amendments in an order[1] may sometimes become necessary in view of criticism of the order made by the Committee on Subordinate Legislation.

(*e*) Further, under an order issued in pursuance of the Essential Commodities Act,[2] it may become necessary to issue subsidiary orders.

Thus, under clause 14(*b*)(*2*) of the Cotton Control Order, 1955, more than 4,000 orders were issued in 1958[3].

(*f*) Again, it may become necessary to add to the *very list of essential commodities* in the Essential Commodities Act[4].

This has been done in respect of several commodities, by notified orders[5-6-7-8-9-10].

The above illustrations will show, that a degree of flexibility is required in regard to control over commodities, which cannot be had under the Indian Penal Code.

Penalties by Rules.

77. In connection with delegated legislation[11], it may be pointed out, that it may be necessary to frame rules imposing different requirements for different situations. An example is a rule made under the Prevention of Food Act[12], whereby the specifications to which "Ghee" must conform were laid down differently for different areas, having regard to the fact that the "Reichert" value of pure ghee is not constant, but is dependent on several factors, such as—what is the breed of the cattle in an area, whether the cattle are fed on pasture or on stall, and so on[13-14].

Special Powers.

78. Another special feature to be noted is the conferment of special powers. An example is section 10 of the Preven-

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[1]See, for example, Sixth Report of the Committee on Subordinate Legislation (Second Lok Sabha) (9th September, 1959), page 2, para. 7.

[2]The Essential Commodities Act, 1955 (10 of 1955).

[3]See Committee on Subordinate Legislation, Sixth Report (Second Lok Sabha) (9th September, 1959), pages 20-21 (Appendix 3), 4th column.

[4]See section 2 (*a*) (*i*), Essential Commodities Act, 1955 (10 of 1955).

[5]S.O. 2232, dated the 13th September, 1960. (Cinema carbons).

[6]S.O. 2896, dated the 8th September, 1962. (Non-ferrous metals).

[7]Notification No. GSR/Ess. Comm. dated the 15th April, 1959. (Press-mud).

[8]S.R.O. 828, dated the 9th April, 1956. (drugs).

[9]S.O. 3594, dated the 24th November, 1962. (Cement).

[10]The list of orders is illustrative only.

[11]Para. 76, *supra*.

[12]The Prevention of Food Adulteration Act, 1954 (37 of 1954).

[13]*Cf. State of U. P.* v. *Kartar Singh*, A.I.R. 1964 S.C. 1135, para. 17.

[14]See also para. 49 (*e*), *supra*.

tion of Food Act[1], whereunder, a food inspector has power to take samples of any article of food from certain persons. As has been pointed out[2], without such a provision, the inspectors cannot carry out the duties assigned to them, and the section, thus, is a "pivotal" section.

Special provision as to sanction.

79. Another type of special provision is a requirement relating to sanction of a particular authority before prosecution can be instituted. An example is section 107 of the Insurance Act[3], under which the sanction of the Advocate-General is required before proceedings could be instituted against insurers or against any director, etc., under the Act[4].

There is a similar provision requiring sanction of the specified authority for prosecutions under the Prevention of Food Adulteration Act[5], the Drugs Act[6], the Income-tax Act[7], the Customs Act[8], and other special enactments.

Provisions for publicity.

80. Special enactments sometimes contain special provisions intended to add to their deterrent effect. The most apt illustration in this context is a provision for publicity. Thus, the Australian Act regarding black-marketing[9], makes elaborate provisions for giving publicity to convictions for black-marketing. When a person has been convicted of the offence of black-marketing, then, under the Act,—

(*i*) the court *shall* require the person convicted to exhibit, outside his place of business, a notice containing particulars relating to the conviction and to keep it exhibited continuously for not less than three months;

(*ii*) the court *may* require him to print on the invoices, accounts and letter-heads to be used by such person in business, during a period of not less than three months, a notice regarding his conviction, containing such particulars as the court determine;

(*iii*) the Attorney-General may direct that the particulars regarding the conviction may be broadcast;

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[1]The Prevention of Food Adulteration Act, 1954 (37 of 1954).

[2]*Narasimharao* v. *State of Andhra Pradesh*, A.I.R. 1964 Andhra Pradesh 501, 503, para. 14.

[3]Section 107, Insurance Act, 1938 (4 of 1938).

[4]As to this section, see *Raghubar Singh* v. *Emp.* A.I.R. 1944 F.C. 25, 29.

[5]Section 20, Prevention of Food Adulteration Act, 1954 (37 of 1954).

[6]Section 15 (2), Drugs (Control) Act, 1950 (26 of 1950).

[7]Section 280, Income-tax Act, 1961 (43 of 1961).

[8]Section 137, Customs Act, 1962 (52 of 1962).

[9]The (Australian) Black-marketing Act (49 of 1942), sections 12, 13 and 14.

(*iv*) particulars regarding the conviction are to be published in the Gazette, and, if so directed by the Attorney-General, also in a newspaper.

Somewhat similar provisions are found in the Act that was in force on the subject in West Bengal[1].

Provisions for publicity are found in some Central Acts also[2-3-4].

Special character of the enactments.

81. The features enumerated above[5] amply show, that the enactments in question are of a special character, and stand apart from the general criminal law of the country embodied in the Indian Penal Code.

Possibility of new offences in future.

82. While taking a decision about transferring the provisions of special enactments to the Indian Penal Code, we should bear in mind a practical aspect, namely, that with the passage of time, new and fresh offences under the head "anti-social offences" will come into existence, and those new offences may, in the light of practical needs, necessitate their own special rules of evidence and procedure, as well as special provisions as to maximum and minimum punishment. The manifestations of human ingenuity cannot be predicted, and special provisions may become necessary to tackle them. On the other hand, it may be that several of the offences dealt with in the special enactments now in force may, in course of time, become obsolete or lose their importance. In view of these considerations, it would be more practicable to keep provisions relating to such offences in special enactments, as they are at present.

In this connection, we may also point out, that besides the offences listed by the Santhanam Committee[6], there are several other offences which could be regarded of an anti-social character, and that these are all dealt with in special laws[7].

Likelihood of new devices coming into existence.

83. We would also point out, that with the passage of time, new and fresh devices to evade the existing taxation or economic laws might come into being, and the more convenient course would, therefore, be to deal with them in the relevant special enactments rather than in the Indian Penal Code.

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[1]Sections 20 and 21, West Bengal Black-marketing Act (32 of 1948) (repealed by West Bengal Act 33 of 1954).

[2]See section 16 (2), Prevention of Food Adulteration Act, 1954 (37 of 1954).

[3]See also section 287 of the Income-tax Act, 1961 (43 of 1961), and the recommendation made in the Report of the Direct Taxes, etc., Committee, (1958-59), pages 186-187, para 7·87, 7·88.

[4]See also section 35, Drugs and Cosmetics Act, 1940 (23 of 1940).

[5]Paras. 48 to 80, *supra*.

[6]Paragraph 2, *supra*.

[7]See Appendix 10.

84. As has been stated[1], "The race between the evaders of the law and the authorities who enforce the law may, in some fields (like techniques and methods), be one (*continuous process*, in which each tries to get the better of the other. In such circumstances, the Legislature and the Government may try to equip the enforcers of the law at any time with powers required *at that time*, considering the *prevailing circumstances*, the nature and extent of actvities of evaders and extent of power requisite for the officers enforcing the law, including *rules and notifications* to deal with the evaders."

Genesis of special enactments.

85. We also made an attempt to study the genesis of some of the special enactments, and the study bears out what we are endeavouring to emphasise, namely the "special" character[2] of the relevant enactments. Thus, the Prevention of Food Adulteration Bill was introduced, for the following reasons[3]:—

> "Adulteration of foodstuffs is so rampant, and the evil has become so widespread and persistent, that nothing short of a somewhat drastic remedy provided for in the Bill can hope to change the situation. Only a *concerted and determined onslaught* on this most anti-social behaviour can hope to bring relief to the nation."

Notwithstanding the existence in the Indian Penal Code of certain sections punishing adulteration[4], the enactment of a separate law was proposed, because that was considered the only adequate way of dealing with the problem.

86. Similarly, the Prevention of Corruption Act, 1947 was passed[5], because the opportunities for bribery and corruption had been enormously increased by war conditions, and because it was anticipated that post-war reconstruction would involve disbursements of very large sums of Government money. The enactment of a special provision whereunder, possession of a sudden accretion of wealth should constitute an offence was (*apart from procedural changes*) the main innovation introduced by the Act. The section creating the offence was framed in the terms in which it is now found (section 5), because it was felt that the correct legal course was to create a *new offence of* "criminal misconduct[6]".

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[1]*Shreeram Durgaprasad (Private) Ltd.* v. *D. C. Customs Department*, A.I.R. 1965 A.P. 294, 302, para. 33 (per Anantanarayana Ayyar J.) (August).

[2]Para. 81, *supra*.

[3]See Statement of Objects and Reasons, Gazette of India (1950), Part II, section 2, page 522.

[4]Sections 272—276, Indian Penal Code.

[5]*Cf.* Statement of Objects and Reasons, Gazette of India, (1946), Part V, page 374.

[6]*Cf.* section 9 (1), Criminal Law Amendment Ordinance, 1943, and section 2 (1), Criminal Law Amendment Ordinance, 1946.

87. Again, the Railway Stores Act[1] was passed in 1955 to replace the Railway Stores (Unlawful Possession) Ordinance[2], and to extend its provisions to Part B States[3]. The Ordinance itself was promulgated on the 13th May, 1944, with a view to preventing persons from having unlawful possession of articles of railway stores, a thing of frequent occurrence *towards the end of the last war*. The Act creates a new offence of "unlawful possession of railway stores[4]". The offence is more drastic than theft and allied offences, inasmuch as, under the Act,—

(*i*) it is enough if there is a reasonable suspicion that the stores are stolen or unlawfully obtained, and

(*ii*) it is for the accused to account satisfactorily how he came by such stores.

88. The Telegraph Wires Act[4] was enacted[5], because thefts of copper wires used in telegraph lines had been so rampant, that tele-communications in several parts of the country were considerably dislocated during the two years preceding the passing of the Act[6]. Many offenders had escaped only due to the failure to prove in court that the wires found in their possession had been stolen from the Posts and Telegraphs Department. Since copper wires used in telegraph lines were of distinctive gauges, it was felt that it would not be unreasonable to presume that any person found in possession of wires of these gauges came into their possession unlawfully (except in the case of persons who purchased them from the Disposal stock). Later, by an amendment in 1953[7], sale or purchase of any quantity of telegraph wire [as defined in section 2(b)] was prohibited except with the permission of the prescribed authority.

89. Similarly, the Imports Act[8] was enacted, because it was considered[9] that the measures of control imposed under rule 84 of the Defence of India Rules and subsequently extended under the Emergency Provisions (Continuance) Ordinance, 1946 (20 of 1946) would have to be continued for some time longer, in order to avoid any disturbance to the economy of the country during the *transition* from war time to peace time conditions. At the same

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[1]The Railway Stores (Unlawful Possession) Act, 1955 (51 of 1955).

[2]The Railway Stores (Unlawful Possession) Ordinance, 1944 (19 of 1944).

[3]See the Statement of Objects and Reasons, Gazette of India, (1954), Part II, section 4, page 374.

[4]Section 3.

[5]The Telegraph Wires (Unlawful Possession) Act, 1950 (74 of 1950).

[6]Gazette of India, (1950), Part II, section 2, page 402.

[7]See section 4A, Telegraph Wires (Unlawful Possession) Act, 1950 (74 of 1950).

[8]The Imports and Exports (Control) Act, 1947 (18 of 1947).

[9]See the Statement of Objects and Reasons, Gazette of India, (1947), Part V, page 86.

time, penalties had been "considerably reduced to suit peace conditions".

90. In this connection, it may be noted, that some of the sections of the Indian Penal Code dealing with offences relating to trade marks, were repealed or amended by special legislation which dealt comprehensively with the subject. Thus, section 478, Indian Penal Code (Definition of trade-mark) and section 480, Indian Penal Code (Using a false trade-mark), were repealed by, and sections 482, 483, 485 and 486 were amended by, the Trade and Merchandise Marks Act, 1958[1]. Alterations in the Indian Penal Code by Special enactments.

91. The study of the genesis of many of the special enactments[2], thus, shows, that they were either enacted to deal with problems which arose temporarily but survived longer than expected, or with problems that were confined to particular trades or industries or particular kinds of public properties, or otherwise to deal with particular *species* of acts regarded as harmful. These laws are, thus, properly described as "special". Even though some of the acts proposed to be penalised by them[3] were already punishable under the Indian Penal Code, yet a special law had to be passed. Special enactments and problems dealt with by them.

CATEGORY 1.—OFFENCES PREVENTING ECONOMIC DEVELOPMENT

92. We now proceed to consider, in detail, the various categories of offences mentioned in the Report of the Santhanam Committee[4]. The first of these is the following:— Offences preventing economic development (Category 1).

> "Offences calculated to prevent or obstruct the economic development of the country and endanger its economic health.".

This appears to be a very wide and all-embracing category. The test being the economic development of the country and its economic health, enactments relating to public finance, control in trade, control on industry, control of power and resources and the like, would all fall under that category. It fact, it is wide enough to cover many of the offences mentioned in the other categories listed by the Committee, for example, evasion of taxes, and profiteering. But, as the other categories have been separately mentioned, the present one would have to be confined to what is not covered by them.

We have listed separately some of the existing laws that seem to have some bearing on such offences[5], that

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[1]The Trade and Merchandise Marks Act, 1958 (43 of 1958).

[2]Paras. 85—90, *supra*.

[3]E.g. theft.

[4]Para. 2, *supra*.

[5]See Appendix 1.

list being illustrative only and not intended to be exhaustive. So far as transferring the penal provisions of these laws to the Indian Penal Code is concerned, we think that it would not be a feasible proposition. It would, in the first place, tremendously increase the bulk of the Code. Secondly, the penal provisions in these enactments are inextricably woven with the other provisions or with the statutory rules issued thereunder. By way of example, we may cite the Industries (Development and Regulation) Act[1]. The penal section in that Act is section 24, which punishes a contravention etc., (*i*) of the provisions of several *sections* mentioned therein, or (*ii*) of directions or orders issued under the *sections* mentioned therein, or (*iii*) of any rule the contravention whereof is made punishable. The Act also contains provisions regarding burden of proof (section 28), and procedure and jurisdiction (sections 27, 29, etc.). All these provisions would become incomplete if the penal sections are transferred to the Indian Penal Code. The same can be said of many other Acts, like the Foreign Exchange Regulation Act, 1947 and the Imports and Exports (Control) Act, 1947.

Other economic crimes mentioned by Santhanam Committee.

93. We next come to the question whether addition of any new provisions is called for under this category. At another place in the Report[2], the Santhanam Committee gave an indication of the white-collar and economic crimes which it had in mind. After observing that such crimes rendered the enforcement of the laws more difficult, and that this type of crime was more dangerous not only because the financial stakes were higher but also because irreparable damage to public morals was done, the Committee stated, that tax evasion and avoidance, share-pushing, mal-practices in the share market and administration of companies, monopolistic controls, usury, under-invoicing or over-invoicing[3], hoarding, profiteering, sub-standard performance of contracts of construction and supply, evasion of economic laws, bribery and corruption, election offences and mal-practices, were some examples of white-collar crimes.

Now, of the examples so given by the Committee, most, if not all, would be covered by the existing enactments on the subjects in question[4], which include certain provisions relating to economic offences also[5]. Monopolistic controls and sub-standard performance of contracts are, of course, important items. But the former has already been

[1]The Industries (Development and Regulation) Act, 1951 (65 of 1951).

[2]Reports of the Santhanam Committee, page 11, para. 2·13.

[3]As to under-invoicing, etc., see also Report of the Santhanam Committee, page 253, item (xxii).

[4]See Appendices 1 to 8.

[5]See Appendix 1.

the subject-matter of consideration by a separate Commission[1], whose report has been submitted recently, and it is unnecessary to discuss it in detail. The latter will be dealt with separately[2].

94. Economic crimes have received elaborate treatment in countries in Eastern Europe[3-4]. But certain observations in relation to the laws in force in those countries penalising such crimes may not be out of place. First, they seem to incarnate the economic and social philosophy of the group of countries concerned. Secondly, they include some activities which are, as a rule, not punishable elsewhere[5], e.g. speculations[6]. Thirdly, many of the formulations of the offences are of a sweeping character. The language employed is general[7], so that the provisions may lead to varying interpretations at different times and places. Whether adoption of economic crimes from Eastern Europe feasible.

95. For the reasons given below, we do not think that provisions of the general and sweeping character found in the laws of countries of Eastern Europe[8] can be incorporated into the Indian Penal Code:—

(*a*) The concepts of economic policy and ideology on which they are based have first to be accepted, before they can be incorporated into the criminal law.

(*b*) Even if those concepts and ideology are accepted, putting such provisions in the criminal law might lead to "bad judicial legislation", in view of their generality. In a country like India, with numerous High Courts, such provisions are likely to lead to conflicting interpretations and consequent uncertainty in the law,—a risk which should be undertaken only where compelling reasons exist.

(*c*) Even if such provisions are to be enacted as a part of the Criminal law, they would appear to be of a special or temporary character. It is doubtful if they can be properly put into the Indian Penal Code, which is the basic penal law of the country.

96. One of the comments received by us suggest, that under the first category[9], the following offences should be Points suggested in comments.

[1]The Monopolies Commission.

[2]See paragraph 126, *infra*.

[3]See para. 29—34, *supra*.

[4]See also Appendices 16 and 21.

[5]*Cf.* Mannheim, Criminal Justice and Social Reconstruction (1946), page 138.

[6]Para. 29, *supra*.

[7]See Appendix 16, sections 225 and 227 (Hungarian Criminal Code).

[8]Para. 94, *supra*.

[9]Para. 92, *supra*.

made penal by inserting a Chapter in the Indian Penal Code: —

(*i*) smuggling across the Indian border;

(*ii*) trafficking in foreign currency and bullion;

(*iii*) any move, open or subtle, purported to obstruct any foreign aid;

(*iv*) any move to incite the peasants in any area to abstain from cultivation;

(*v*) inciting strikes calculated to paralyse any transport or communication system, such as Railways, Port or road transport, etc.;

(*vi*) under-invoicing export and over-invoicing import;

(*vii*) export of manufactured goods, handicrafts or raw materials, in quantities below the specified standards.

97. We are not able to accept the suggestion. Some of the offences, *e.g.* smuggling and trafficking in foreign currency, are already covered by special enactments[1]. A few, like "any move to obstruct any foreign aid" or "any move to incite the peasant to abstain from cultivation" appear to be too wide. Assuming that such provisions would be constitutional—a point on which we do not express any opinion,—they might cover many innocent activities. For example, a person who expresses an honest difference of opinion in regard to the policy followed as to foreign aid may find himself within the four corners of the suggested offence of "any move to obstruct any foreign aid". The rest, such as inciting strikes, etc., can be more appropriately dealt with in legislation relating to industrial disputes.

CATEGORY 2.—EVASION AND AVOIDANCE OF TAX

Evasion, etc. of tax (Category 2).

98. The second category of offences mentioned by the Santhanam Committee is—

"Evasion and avoidance of taxes lawfully imposed".

At another place in the Report[2], the Committee discussed in detail the topic of evasion and avoidance of income-tax, and enumerated certain sections of the Income-tax Act, 1961, which appeared to the Committee to offer scope for *avoidance* and evasion[3]. The Committee observed, that the Department itself should examine and take suitable steps to plug loopholes on these matters; it suggested certain administrative measures, as well as two

[1]See Appendix 1.

[2]Report of the Santhanam Committee, page 271 and page 272, items (*vii*) and (*viii*).

[3]Those sections are listed in Appendix 10 to this Report.

changes of a legal nature, namely, (*i*) making the income-tax offences of illegal evasion and avoidance cognizable and non-compoundable, and (*ii*) a provision that the punishment should be imprisonment for *at least* three years, and the amount found to be evaded or avoided, should be liable to forfeiture.

It may also be noted, that so far as evasion of *customs duty* is concerned, the Report of the Committee contains a detailed discussion as to smuggling[1].

"Evasion" and "avoidance"

99. It is unnecessary to elaborate here the distinction ordinarily understood between "evasion" and "avoidance". The former denotes a defect in the enforcement of the laws, while the latter denotes a defect in the law itself. The latter has to be tackled by a detailed study of the provisions of the relevant enactments.

100. The following extract from the Report of the Income-tax Investigation Commission[2], which was presided over by Sir S. Varadachariar, former Judge of the Federal Court, lucidly explains the distinction between the two:—

> 'It remains to add a few observations relevant to the problem of avoidance and evasion. According to well-established usage, the term "avoidance" denotes the utilisation of loopholes to effect tax saving, within the letter though perhaps contrary to the spirit of the law. It is rendered possible by defects in the framing of the law or in its drafting, as a result of which cases within the intendment of the law have not been brought in by clear or apt words, or cases which ought to be fairly comprised within the policy of the law have been omitted by oversight or for other reasons. Leakage of tax in this way has to be prevented by making the law clearer or wider; *but there will never be an end to attempts at income-tax avoidance.* Though a Lord Chancellor some years ago referred in terms of disapprobation to the efforts of tax dodgers and to "the professional gentlemen who assisted them in the matter[3]" (*Latilla* v. *Inland Revenue Commissioner*[3]—Law Reports 1943 Appeal Cases at page 381), popular or professional opinion does not seem to share that view but is prepared to regard such attempts as a "commendable exercise of ingenuity". As courts are slow to construe tax laws according to their "intent" (as distinguished from the letter of the law), occasional

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[1]Report of the Santhanam Committee, page 19, para. 3·15 and page 281.

[2]Report of the Income-tax Investigation Commission, (1949), page 7, para. 18.

[3]*Latilla* v. *Inland Revenue Commissioners*, (1943) 1 All Eng. Reports 255, at page 256 (House of Lords).

modifications of the statute will be necessary to close loopholes that "judicial construction cannot plug". "Evasion" is applied to the escape from taxation, accomplished by breaking the letter of the law, whether intentionally or through mistake or negligence. Most frequently, taxes are evaded because proper administrative machinery has not been provided or the machinery is not working properly. Evasion has therefore to be combated mainly by "improving" the administration of the law—we advisedly say "improving" though some would prefer to speak of it as "tightening" the administration.

"To the extent to which the weaknesses of the administration may be traceable to defects in the law (particularly in the sanctions provided by the law), some changes in the law may be necessary even to prevent evasion. Under a system where the assessment of the tax depends to a large extent upon information given by the assessee, he has every opportunity, and, when the rate of tax is high, every temptation, to attempt evasion. *This can be met only by improving the efficiency of the administration*".

Attitude towards tax avoidance in England.

101. Two varying attitudes seem to have been shown towards tax avoidance in England. The traditional attitude of the judiciary was, that a tax-payer is entitled to avoid the payment of tax so long as he could do so by legal means. There is no rule of law against the subject's making genuine and lawful arrangements to reduce tax[1-2].

102. This traditional attitude is represented by the following view expressed by Lord Quickswood[3-4]:—

"Taxation is *prima facie* a wrong, for it consists in taking from the taxpayer what belongs to him; and that is *prima facie* wrong. Taxation is justified only by the authority of the State, which is expressed in the law. The taxpayer is morally bound to obey the law, but is not bound beyond the law; for, apart from the law, taxation would be blackmail or racketeering. There is not, behind taxing laws, as there is behind laws against crime, an *independent moral obligation. When therefore the taxpayer has obeyed* the law, he has done *all that morality requires.*

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[1]*Cf. I.R.C.* v. *Duke of Westminster*, (1936) A.C.1, 19 ; (1935) All Eng. Reports Reprint 259, 267 (H.L.).

[2]For a detailed discussion on "evasion", "shifting" and "minimising" of tax, see Encylopaedia of Social Sciences (September 1951 Reprint), Vol. 14, page 535 under "Taxation" (Robert Murray Haig).

[3]Lord Quickwood, Letter to the Times, February 20, 1943, cited in Mannheim, Criminal Justice and Social Reconstruction (1946), page 146.

[4]See also Lord Tomlin in *I.R.C.* v. *Westminster*, (1936) A.C.1, at page 19; (1935) All E.R. Rep., 259, 267.

It is said, that by avoiding a tax he throws a load on to some other taxpayer. But this is not quite accurate; for the deficiency might be met by reducing expenditure.... is it not a good thing that there should be this last lawful remedy against oppressive taxation by a majority, that human ingenuity can always find a way by which the minority can escape from tyrannical imposts?".

103. Lord Tomlin's observations may also be cited[1]:—

> 'Apart, however, from the question of contract with which I have dealt, it is said that in revenue cases there is a doctrine that the court may ignore the legal position and regard what is called "the substance of the matter", and that here the substance of the matter is that the annuitant was serving the Duke for something equal to his former salary or wages and that, therefore, while he is so serving the annuity must be treated as salary or wages. This supposed doctrine (upon which the commissioners apparently acted) seems to rest for its support upon a misunderstanding of language used in some earlier cases. The sooner this misunderstanding is dispelled and the supposed doctrine given its quietus the better it will be for all concerned, for the doctrine seems to involve substituting "the uncertain and crooked cord of discertion" for "the golden straight mete wand of the law".' (4 Inst. 41).

'Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less that it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. This so-called doctrine of "the substance" seems to me to be nothing more than an attempt to make a man pay notwithstanding that he has so ordered his affairs that the amount of tax sought from him is not legally claimable.'.

104. The following observations of Viscount Simon[2], L.C., however, illustrate a change of attitude[2]:—

> 'My Lords, of recent years much ingenuity has been expended in certain quarters in attempting to

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[1] *I.R.C.* v. *Duke of Westminster*, (1936) A.C. 1, 19; (1935) All Eng. Reports 259, 267, 268 (H.L.).

[2] *Latilla* v. *Inland Revenue Commissioners*, (1943) A.C. 377, 381; (1943) 1 All Eng. Reports, 265, 266; 25 Tax Cases 107, 117 (H.L.).

[3] Detailed study as to tax avoidance will be found in—

(*i*) notes by A. Farnsworth in the Modern Law Review, (1942 page 75, (1943) page 243, and (1944) page 84; and

(*ii*) article by Wheatcroft, "The attitude of the Legislature and the Courts to tax avoidance," (1955) 18 Modern Law Review 209.

devise methods of disposition of income by which those who were prepared to adopt them might enjoy the benefits of residence in this country while receiving the equivalent of such income, without sharing in the appropriate burden of British taxation. Judicial dicta may be cited, which point out that, however elaborate and artificial such methods may be, those who adopt them are "entitled" to do so. There is, of course, no doubt that they are within their legal rights, but that is no reason why their efforts, or those of the professional gentlemen who assist them in the matter, should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeed, is, of course, to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how, to adopt these manoeuvres. Another consequence is that the legislature has made amendments to our income-tax code which aim at nullifying the effectiveness of such schemes.'

105. But it would appear, that there has, again, been a trend in the reverse direction[1-2-3-4].

106. The following observations of Lord Simonds would be of interest in this connection[5]:—

"The determination of these appeals involves a consideration of certain sections of two Acts of Parliament which were designed to bring within the ambit of taxation to income-tax and sur-tax income which would otherwise escape that burden. For that reason and because the ways of those who would avoid liability to tax are often devious and obscure, the sections are framed in language of the widest and most general scope and in the case of one of the Acts [I refer to the Finance Act, 1936, section 18(4)] the operative sub-sections are reinforced by a provision which appears to exhort the assessing authority, and presumably the court, to let the balance, wherever possible, be weighted against the taxpayer. But, this notwithstanding, *I think that it remains the taxpayer's privilege to claim exemption from tax unless his case is fairly brought within* the words of the taxing section, and it is in this light that I examine the

[1] *Vestey's (Lord) Executors* v. *I. R. C.* (1949) 1 All Eng. Rep. 1108, 1113, 1115, 1124, (per Lord Simonds and Lord Normand).

[2] *Potts Executors* v. *I.R.C.*, (1951) 1 A.C. 443 ; (1951) 1 All Eng. Reports 76, 81, 82, 88 (H.L.)

[3] *I.R.C.* v. *Wolfson*, (1949) 1 A.E.R. 865, 868.

[4] *Attorney General* v. *A. W. Gamogo Ltd.*, (1949) 2 A.E.R. 732, 734.

[5] *Vestey's(Lord) Executors* v. *I.R.C.* (1949) 1 All Eng. Reports 1108, 1112, 1113 (H.L.).

applicability of the Finance Act, 1936, section 18, and the Finance Act, 1938, s. 38, to the circumstances of the late Lord Vestey and his brother Sir Edmund Vestey.".

Reference may be made to the observations of Lord Normand[1]:—

"Parliament in its attempts to keep pace with the ingenuity devoted to tax avoidance may fall short of its purpose. That is a misfortune for the taxpayers who do not try to avoid their share of the burden, and it is disappointing to the Inland Revenues. But the Court will not *stretch the terms* of taxing Acts in order to improve on the efforts of *Parliament and to stop gaps* which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of *much greater evils* if the courts were to overstretch the language of the statute in order to subject to taxation people of whom they disapproved."

Interpretation of taxing Act.

107. We may also refer to the principles adopted regarding interpretation of taxing Acts. The following observations of Lord Cairns[2-3] may be referred to in this connection:—

".....as I understand the principle of all fiscal legislation, it is this:

If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute.".

108. Other decisions on the subject are collected in a recent case of the Andhra Pradesh High Court[4]. The following observations of the Supreme Court may also be referred to:—

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[1]*Vestey's (Lord) Executors* v. *I.R.C.*, (1949), 1 All Eng. Reports 1108, 1120 (H.L.).

[2]*Partington* v. *Attorney General*, (1869) Law Reports 4 H.L. 100, 122.

[3]See, further, Craies, Statute Law (1963), pages 113—116.

[4]*Ramakrishna* v. *State of Andhra Pradesh*, A.I.R. 1965 A. P. 420, 42 3 (November).

"Sub-section (2) of section 21 (of the Bombay Sales-tax Act 3 of 1953) is a penal provision contained in a taxing statute and the Court cannot speculate contrary to the plain intendment of the words used about the object of the Legislature. If the Legislature has failed to clarify its meaning by the use of appropriate language, the benefit thereof must go to the taxpayer. It is settled law that in case of doubt, that interpretation of a taxing statute which is beneficial to the taxpayer must be adopted.".[1]

109. Legislation passed in England during and after the Second World War illustrates the increasing efforts made by the legislature to check avoidance of tax[2].

Avoidance not always fraudulent.

110. As regards tax avoidance, it has been recognised in the U.S.A., that every transaction which *results* in tax avoidance is not always entered into with the *sole object* of avoidance of tax. As an example, we may cite the American institution of "foundation". An individual, a family or a corporation may donate a proportion of his or its assets to a permanent institution "established for officially recognised charitable purposes", the donor usually being the controller of an industrial or business empire[3]. Such donations are exempt from gift tax, and are deductable for purposes of estate tax. So far as the donee organisations are concerned, they would ordinarily be exempt from income-tax, property tax and other taxes. Further, the donor gets a deduction in taxes in respect of the charitable gift *inter vivos* (within certain limits). By transferring the capital and annual income from his personal estate, the donor thus reduces his liability to tax. *At the same time,* the donor sanctifies his name and gives a public proof of his social responsibility through the establishment of a charitable institution[4].

Views of Courts in India as to avoidance.

111. In many Indian decisions[5-6-7-8-9-10-11] it has been pointed out, that legal avoidance cannot be regarded as reprehensible.

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[1]*State of Bombay* v. *Automobile and Agricultural Industries Corpn.*, (1961) 12 S.T.C. 122 (S.C.) (Kapur, Hidayatullah and Shah JJ.).

[2]See, for example, section 35 (1), Excess Profits Tax Act, 1941 (U.K.).

[3]See Friedmann, Law in a Changing Society, (1959), pages 86, 290 to 293.

[4]See also Report of the Select Committee to investigate foundations (House of Representatives, Reports No. 2514, 82nd Congress, 2nd Session 1953).

[5]*In re Bai Sakinaboo,* A.I.R. 1932 Bom. 116, 117 (Beaumont C.J. and Rangnekar J.).

[6]*In re Central Talkies Circuit,* A.I.R. 1941 Bom. 205, 206, 207 (Beaumont C.J. and Kania J.).

[7]*Devarajulu Co.* v. *I.T.C.*, A.I.R. 1950 Mad. 718, 722, para. 10.

[8]*Meyyappa* v. *I.T.C.*, A.I.R. 1951 Mad. 506; 513, 514, para. 17.

[9]*Ganga Sagar* v. *Emp.*, A.I.R. 1929 All. 919, 923 (Mukerjee J.).

[10]*Rajniti* v. *C.I.T.*, I.L.R. 9 Pat. 194; A.I.R. 1930 Pat. 33, 35 (Courtney-Terrell C.J.).

[11]See also article in A.I.R. 1953 Journal 26.

The following passage in the judgment in a Bombay case[1] puts the matter lucidly:—

> "It has also been stated that the same result may be achieved by two entirely different transactions, and it may be that whereas one transaction could be subjected to tax, the other might not be, and it is not open to the Court to tell the assessee that he could rather have entered into a transaction which subjected him to taxation rather than a transaction which permitted him to escape taxation. A citizen is perfectly entitled to exercise his ingenuity so as to arrange his affairs as may make it possible for him legally and lawfully not to pay tax, and if his ingenuity succeeds, however reluctant the Court may be to acknowledge the cleverness of the assessee, the Court must give effect to the letter of the taxation law rather than strain that letter against the assessee.".

Method of checking evasion.

112. It may also be noted, that besides the imposition of penalities and institution of prosecutions, there are many other methods of preventing illegal evasion of taxes, particularly, strengthening the administrative machinery and streamlining the procedure. We need not repeat what has been said in the valuable reports of the various Committees[2] that had occasion to go into the subject[3].

Existing provisions analysed.

113. The existing provisions relating to tax evasion have been listed separately[4]. Broadly speaking, provisions against evasion can be classified into—

(*i*) provisions which enable the taxing authority to *assess* income, etc., which has escaped assessment;

(*ii*) provisions which empower such *authority itself* to impose a *penalty;* and

(*iii*) provisions which create offences for which a prosecution can be instituted in the *criminal courts.*

An example of the first[5] is section 34 of the Income-Tax Act, 1922, (now sections 147 to 153 of the Income-tax Act, 1961)[6]. An example of the second is section 273 of the Income-tax Act, 1961[7]. Strictly speaking, we are concerned here only with the third class. But it will be necessary to refer to provisions of the second class, for purposes of comparison.

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[1] *Provident Investment Co.*, v. *I.T. Commissioner*, A.I.R. 1954 Bom. 95, 97, para. 3 (Chagla C.J.).

[2] Appendices 12 to 15 to this Report may be seen in this connection.

[3] See para. 100, *supra.*

[4] See Appendix 2.

[5] For history of section 34, see *Radheshyam* v. *Union of India*, A.I.R. 1960. Bom. 353, 355, *et seq.*

[6] The Income-tax Act, 1961 (43 of 1961).

[7] The Income-tax Act, 1961 (43 of 1961).

Transfer of existing provisions not feasible.

114. We have considered the question whether the transfer of the provisions[1] relating to evasion of tax to the Indian Penal Code would be advantageous. The laws, of which there provisions form part, constitute self-contained Code. In the first place, these provisions contain minute and detailed references to the other sections of the enactment of which they form part—*e.g.* the section under which a return is to be filed, or a stamp is to be fixed, or the like. They cannot be divorced from those sections. Secondly, if they are to be transferred to the Penal Code, then, whenever laws imposing new kinds of taxes are passed in the future, it may become necessary to amend Indian Penal Code also, and that might prove to be an inconvenient process. Thirdly, there are special procedural provisions[2], which require the sanction of a particular authority for instituting a prosecution for an offence under the particular enactment, or which authorise the compounding of offences, and so on. If the penal provisions of the taxing enactments are transferred to the Indian Penal Code, then the relevant *procedural* provisions of the taxing enactments—which will then lose their justification for being retained in the taxing enactments will have to be transfered to the Code of Criminal Procedure, and that process also would be inconvenient.

Placing provisions as to evasion in the Penal Code.

115. So far as we could ascertain, there is hardly any country governed by the common law system where the offence of evasion of taxes has been incorporated in the Penal Code. The provisions are found to exist either in the enactments relating to the particular taxes[3], or in a general Taxation Law[4].

116. Further, the administration of these laws requires specialised knowledge and experience, including, particularly, a knowledge of the various classes of income or transactions that are taxable, the various deductions, exemptions and concessions that are permissible, and the departmental practice. Even if these provisions are transferred to the Penal Code,—assuming that such transfer is feasible—the need for this special knowledge and experience will always remain. There will be no practical improvement as the police will not possess this special knowledge and experience.

117. So far as we could gather, none of the various Committees or Commissions[5] that have gone into the question of taxation structure or Taxation Laws or the administration of Taxation Laws, has found fault with the placing of the penal provisions in the taxation enactments.

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[1] Para. 113, *supra*.

[2] E.g., section 279, Income-tax Act, 1961 (43 of 1961).

[3] For example, section 198 of the Tasmania (Australia) Criminal Code Act, (1924), reproduced in Appendix 28.

[4] For example, section 201, Internal Revenue Code of the U.S.A., discussed in Appendix 22.

[5] See Appendices 12, 13, 14 and 15.

118. We also considered at length the question whether it would be desirable to insert a general provision in the Indian Penal Code, punishing the evasion of taxes. The arguments for and against the adoption of such a course are summarised below:— Question of enactment of general provision as to tax evasion considered.

Arguments for and against including in the Indian Penal Code of the offence of tax-evasion

For	Against
(1) A provision in the Indian Penal Code will reflect the society's abhorrence of the crime in question and the importance which it attaches to it.	(1) The abhorrence is already indicated by the Income-tax Act. It is not necessary to put it in the Indian Penal Code.
(2) A comprehensive provision applicable to *all taxes* would be desirable.	(2) The purpose is adequately served by existing provision in the law relating to each tax.
(3) Evasion of taxes is a major problem, and should be dealt with criminally.	(3) The defect is not in the law but in its enforcement. Even the existing penal provisions are not enforced.
(4) Acts like keeping false accounts, making false entries, keeping unaccounted money, should be covered.	(4) In practice, filing a false return is the usual type of evasion. This is sufficiently provided for by existing laws.
(5) Prosecution for tax-evasion should be allowed at the instance of *any person.*	(5) Tax evasion is a technical subject, requiring special knowledge. Only the Departmental Officers are in a position to understand the technicalities.
	(6) A sweeping provision may, in practice, turn out to be vague, and thus cause hardship.

For	Against
	(7) In particular, the word "evade" is vague, and may be interpreted so as to embrace even legitimate avoidance.
	(8) Any widening of the penal provisions regarding taxation laws should be undertaken with caution, as it may bring into being a weapon which has great potentialities for abuse.
	(9) Prosecution is not the only method of checking evasion. The real remedy lies in various other non-penal measures, such as a proper tax structure, adequate strength of officers, increased civic consciousness, creation of cordial relations with assessees, and prompt action under the existing laws.
	(10) None of the various Committees that have gone into the subject of taxation in India have recommended such a change.

After a careful consideration of all the issues involved, we have come to the conclusion that the inclusion of a general penal provision of the nature referred to above would not prove to be an improvement in practice, and may even cause hardship by reason of its vagueness. In considering the question of inserting such a penal provision, regard must be had not only to those who are guilty, but also to those who are innocent.

119. As to the question of insertion of *new* provisions relating to evasion of tax, we do not think it proper to discuss that question in the abstract. Any specific recommendation must await specific proposals for amendment. Addition of new provision.

120. In one of the comments received by us, a suggestion has been made that the suppression of income, or suppression of information relating to sale and purchase, should be made an offence, either by including it in a Chapter in the Penal Code intended to deal with social and economic offences, or by inserting a new section 477B. The matter, however, seems to be amply covered by the provisions in the various enactments relating to taxation[1], and a new provision does not appear to be called for. Points suggested in comments.

121. Regarding "avoidance", it is obvious that the changes, if any, will have to be made not in the penal law but in the taxing enactments[1]. That is outside the scope of this Report. Avoidance how to be tackled.

Category 3.—Misuse of Public Position by Public Servants

122. The third category of offences mentioned by the Santhanam Committee is the following:— Misuse of their position by public servants etc. (Category 3).

> "Misuse of their position by public servants in making of contracts and disposal of public property, issue of licences and permits and similar other matters".

The Committee observed[2], that where there was power and discretion, there was always the possibility of abuse, more so when the power and discretion had been exercised in the context of scarcity and controls and pressure to spend public money. It also referred[4] to dishonest practices like the system of "speed money" (money paid to speed up the process of movement of files, etc.) and to the corruption prevalent in contracts of construction, purchases, sales, etc.[5].

123. There are numerous provisions regarding misuse of position by public servants in various enactments[6]. Misuse of such position in the *making of contracts or disposal of property* is not *separately* dealt with in any of these enactments. If by such misuse the public servant concerned obtains any valuable thing or pecuniary advantage, the offence would be covered by section 5(*1*) (*d*) read with Existing provisions analysed.

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[1] See Appendix 2.

[2] *Cf.* Para. 99-100, *supra.*

[3] Report of the Santhanam Committee, page 9, para 2·9.

[4] Report of the Santhanam Committee, page 9, para. 2·10.

[5] Report of the Santhanam Committee, page 10, para 2·11.

[6] See Appendix 3.

section 5(2) of the Prevention of Corruption Act[1-2], the relevant portion of which is quoted below[1]:—

"5(1). A public servant is said to commit the offence of criminal misconduct in *the* discharge of his duty if he, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person any *valuable thing* or pecuniary *advantage.*

5(2). Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.".

Misuse without benefit.

124. What remains is the misuse of such position without obtaining any *such benefit. Such cases would* be rare, and if they do happen, it would be difficult to ascribe a criminal intention to the person concerned in such cases.

Points raised in comments.

125. It has been suggested in one of the comments received by us, that a new section—section 164A—should be inserted in the Indian Penal Code to penalise the misuse of position by public servants in the making of contracts, etc. The matter, however, seems to be sufficiently covered by section 5 of the Prevention of Corruption Act[3].

CATEGORY 4.—DELIVERY OF GOODS NOT IN ACCORDANCE WITH CONTRACT

Delivery, etc. of goods not in accordance with contract. (Category 4).

126. The fourth category of the offences listed by the Santhanam Committee is the following:—

"Delivery by individuals and industrial and commercial undertakings of goods not in accordance with agreed specifications in fulfilment of contracts entered into with public authorities".

At another place in the Report[4], the Committee observed, that frequently it was the dishonest contractors and suppliers who, having obtained the contract by undercutting, wanted to deliver inferior goods or get approval for sub-standard work, and, for this purpose, were prepared to spend a portion of their ill-earned profit. In an Annexure to the Report[5], the Committee discussed in detail how favours could be shown by passing and accepting

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[1] The Prevention of Corruption Act, 1947 (2 of 1947).

[2] For a detailed analysis, see Appendix 23.

[3] The Prevention of Corruption Act 1947 (2 of 1947).

[4] Report of the Santhanam Committee, page 10, para 2·11.

[5] Report of the Santhanam Committee, Annexure VII, page 236, item (i).

goods which were not strictly in accordance with the specifications laid down in the accepted tenders, or by not applying the penalty clause in respect of rejected goods, or by not strictly applying all the terms of the contract, or by giving wrong certificates about completion of inspection or actual despatch of goods.

Existing provisions analysed.

127. We have listed separately[1] some of the existing provisions which have a bearing on the mal-practice in question the most important of these are sections 415 and 420, Indian Penal Code, which run as follows:—

Cheating.

'415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.'.

Cheating and dishonestly inducing delivery of property.

"420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.".

"Cheating" and delivery of goods, etc.

128. We considered carefully the question whether the offence in question is covered by section 415—420, Indian Penal Code. "Cheating", as defined in section 415, requires—

(*a*) deception of *a person, plus*

(*b*) fraudulently or dishonestly inducing the person *so deceived* to deliver any property etc.

OR

(*a*) deception of a person, *plus*

(*b*) intentionally inducing the person *so deceived* to do or omit any thing which he would not do or omit if he were not *deceived, and* which act or omission causes, etc., damage or harm to that person in body, mind, reputation or property.

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[1]See Appendix 4.

[2]Para. 127, *supra.*

The section, thus, falls into two parts[1]. Under the first part, the act must be done fraudulently, etc., and must result in delivery, etc. Under the second part, there must be intentional inducement, etc., and the act or omission induced must cause damage or harm. *Deception*, is, however, common to both the parts.

129. Deception generally is "to lead into error by causing to believe what is false or to disbelieve what is true"[2].

The following observations of Buckley J.[3] as to the meaning of "deceive" are interesting:—

> "To deceive is, I apprehend, to induce a man to believe that a thing is true which is false, and which the person practising the deceit knows or believes to be false. To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action.".
>
> (The aspect of likelihood of injury, as an ingredient of "intent to defraud", is not relevant for the present purpose)[4].

Meaning of "deception".

130. The first ingredient of cheating is, thus, "deception". The point which requires consideration is, whether there is "deception" when a person delivers sub-standard goods, without making any *express representation* that the goods are in accordance with the contract. The argument that may be advanced is, that the contractor does not *deceive* any person, where he makes no *representation* that the goods are in accordance with the contract. We are not inclined to accept this argument. Though decided cases dealing with this specific point are few[5], it would appear, that in such case a representation to the above effect could be *implied*. It may be pointed out, that, as provided by the *Explanation* to section 415, Indian Penal Code[2-3], a dishonest concealment of facts is "deception". Illustrations (*h*) and (*i*) to section 415 also emphasise the same aspect.

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[1] *Cf. Ramji* v. *Harshadrai*, A.I.R. 1960 Bom. 268.

[2] See *P. P.* v. *Vedantam*, A.I.R. 1952 Mad. 183, para. 4 (Subba Rao J.)

[3] *Re London and Globe Finance Corporation Ltd.* (1903) 1 Ch. 728, 732-733 approved in *R.* v. *Wines*, (1953) 2 All Eng. Reports 1497, 1498 (Court of Criminal Appeal).

[4] As to this, see—

(*i*) R. N. Gooderson, "Prejudice as a test of Intent to defraud", (1960) Camb. Law Journal 199, 201.

(*ii*) *Q. E.* v. *Abbas*, I.L.R. 25 Cal. 512 (F. B.).

(*iii*) *Q. E.* v. *Soshi Bhushan*, (1898) I.L.R. 15 All. 210, 217

[5] See Appendix 24.

[6] See also para. 127, *supra*.

[7] *Surendra* v. *Bai Narmada*, A.I.R. 1963 Guj. 239.

131. As has been observed[1], "The practice of deception implies the practice of fraud and falsehood. For, there can be no deception without fraud, and falsehood is a species of fraud implied in deceit. Now, fraud is *hydra-headed*, and its ways of attack are insidious and innumerable. It may consist of words, acts or *conduct*, or all combined.".

Point of implied representation academic.

132. In practice, the point[2] may often be academic, as in respect of huge contracts where detailed bills are to be submitted, the bills will have *to describe* the goods supplied in great detail, so that the contractor cannot avoid making *an express* representation at some stage or other[3].

Attempt to cheat.

133. Where the defect in the goods is discovered before payment, it would be an attempt to cheat[4-5-6].

Complicity of officers and offenders.

134. Another point which we had to consider was, whether cases where the officer receiving delivery and the offender are acting in complicity, are covered by sections 415—420, Indian Penal Code. We think that they would be covered. In fact, this seems to have been assumed in a recent decision of the Supreme Court[7], and in cases of certain High Courts[8-9].

Position in English law.

135. In England, at common law, short delivery was held not to be "cheating" (in the absence of use of false measures, etc., as a general course of dealing, or to many customers, or unless there is a conspiracy to cheat)[10-11]. The act was regarded only as an *unfair dealing*. It was stated, that fraud, to be the object of a criminal prosecution, must be calculated to defraud numbers.

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[1] Gour, Penal Law of India, (1962), Vol. 3, page 2225.

[2] Para. 130, *supra*.

[3] *Cf. Billinghurst* v. *Emp.* A.I.R. 1924 Cal. 18, 41, 43 (Sanderson C. J. and Richardson J.).

[4] *Billinghurst* v. *Emp.* A.I.R. 1924 Cal. 18, 41, 43 (Sanderson C. J. and Richardson J.).

[5] *R.* v. *Light*, (1915) 84 L.J.K.B. 865 ; (1914-15) All. E.R. Rep. 659 (C.C.A.).

[6] Halsbury's Laws of England, (3rd Edn.), Vol. 10, page 828, footnote (*h*) and page 931, para. 1602.

[7] *Cf. Banwari Lal* v. *The Union of India*, A.I.R. 1963 S.C. 1620.

[8] See *in re J. S. Dhas*, A.I.R. 1940 Mad. 155, 157.

[9] The decision in *Sheonarayan* v. *State of Bihar*, A.I.R. 1953 Pat. 225, 228, 229, para. 11 (S. K. Das J.) can be distinguished on the facts.

[10] *R.* v. *Wheatly*, (1761) 2 Burr. 1125, 1127, cited in Archbold, Criminal leadings, etc. (1962 Edn.), para. 2001.

[11] See also Russel on Crime (1964), Vol. 2, pages 163 and 1164.

This rule of the common law was altered, to some extent, by section 32, Larceny Act[1-2]. The relevant portion of the section runs as follows:—

"32. Every person who by *any false pretence* (1) *with intent to defraud*, obtains from any other person any chattel, money, or valuable security, or causes or procures any money to be paid, or any chattel or valuable security to be delivered, to himself or to any other person for the use or benefit or on account of himself or any other person; .....

.....

.....

.....

shall be guilty of a misdemeanour and on conviction thereof liable to imprisonment for any term not exceeding five years.".

The expression "false pretence" includes a pretence by act or conduct, without words spoken[3].

Kinds of malpractices.

136. In one of the comments[4] received by us, it has been stated that there are three kinds of malpractices that have come to notice—

(*a*) The contractor, in collusion with the inspectors of Government, committed illegal acts in getting stores of an inferior quality passed as if they were of the specifications specified in the contract, and supplied the same and induced the Government to part with the value thereof.

(*b*) The contractor, after getting the stores passed by the inspectors, despatched unpassed stores in place of passed stores, and thus defrauded the Government by inducing it to part with the value of the passed stores.

(*c*) The contractor, by furnishing false particulars and quoting fictitious numbers of Railway Receipts, cheated the Government and obtained 90 per cent. price of the goods without supplying them.

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[1]See section 32, Larceny Act, 1916 (6 and 7 Geo. 5, C. 50).

[2]See Russell on Crime (1964), Vol. 2, pages 1165 and 1166.

[3]Russell on Crime (1964), Vol. 2, page 1176.

[4]The comment, however, adds that practically all these are covered by the existing penal provisions in s. 415 and 420, read with sections 109 and 120-B, ndia Penal Code.

137. In view of the fact that the volume of contracts with Government and other public authorities has increased tremendously and is likely to increase further, and also having regard to the fact that the point was raised before us, we propose a specific provision on the subject[1] though we think that the existing law covers it. Before, however, it is enacted into law, one practical aspect which we have indicated separately[2], will have to be examined by the Government. Proposed section.

138. Some of the comments received by us objected to treating undertakings in public and private sectors differently in this respect. It has also been stated, that sometimes goods are not delivered in accordance with agreed specifications, for reasons beyond the control of the parties concerned, and it has been suggested that it should be clearly laid down that mis-delivery or wrong-delivery should be considered an offence only if *done deliberately*. Points suggested in comments.

So far as the first point is concerned, we think that a fraudulent breach of contract with the Government or a public authority can be regarded as standing on a different footing from a fraudulent breach of a private contract. So far as the second point is concerned, the provision proposed by us[3] has been so framed as not to take in any such honest defaulters.

139. We should, however, state here, that we have not considered the question whether the proposed section[4] would deter honest contractors from entering into contracts with the Government and other public authorities. An apprehension to that effect has been expressed in one of the comments received by us on the subject. Before the proposed section is enacted, this aspect of the matter, which is a practical one, will have to be examined by the Government. Proposed section not to be enacted without considering likely repercussions.

Category 5.—Hoarding and profiteering

140. The fifth category of the offences mentioned by the Santhanam Committee is—"Profiteering, black-marketing and hoarding.". Hoarding and profiteering (Category 5).

141. The existing laws relating to these offences are listed separately[5]. As will be seen, the details of the policy laid down in these laws have to be worked out by orders and rules issued under those laws. The provisions that emerge, as a result of those laws read with such statutory Existing provisions analysed.

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[1] Appendix 31, section 420A, Indian Penal Code (Proposed).

[2] Para. 139, *infra*.

[3] Appendix 31, section 420A, Indian Penal Code (Proposed).

[4] Para. 137 *supra*.

[5] See Appendix 5.

orders or rules, are bound to vary in respect of each commodity or group of commodities. There is a whole structure of legislation and sub-legislation which has come into existence as a result of the exercise of various powers by various authorities as to the control of essential commodities. We do not think that the transfer of the offences against such legislation to the Penal Code would be convenient. It should also be noted, that there are special rules of evidence and procedure enacted by some of these enactments. For example, section 11 of the Essential Commodities Act[1] bars the court from taking cognizance of an offence under that Act, except on a written report of a public servant. Again, section 14 of that Act enacts a rule as to burden of proof. It is obvious that the Indian Penal Code cannot, be encumbered with these provisions.

History of legislation relating to control of essential commodities.

142. Another aspect to be emphasized is that these offences are essentially of a temporary and special character. The conditions of scarcity prevailing in respect of each commodity are bound to differ from time to time and from place to place, and for that reason, their transfer to the Indian Penal Code would not lead to any practical benefit. The history of the legislation on the subject may be noted. During the Second World War, provisions on the subject were contained in the Defence of India Rules. In 1946, the Central Legislature passed the Essential Supplies (Temporary Powers) Act[2] under Entries 27 and 29 of List II of the Government of India Act, 1935, "Trade and Commerce within the Province" and "production, supply and distribution of goods" as altered by the India (Central Government and Legislature) Act, 1946[3] (hereinafter referred to as the English Act).

143. The effect of the English Act was to empower the Central Legislature to make laws with respect to trade and commerce in, and production, supply and distribution of, certain specified goods[4], for a temporary period mentioned in section 4, and the Essential Supplies Act came into force on the 19th November, 1946. The Act was to expire on the expiry of the period mentioned in section 4 of the English Act. But, by the combined effect of the public notification issued by the Governor-General under section 4 of the English Act, and the resolutions passed from time to time by the Constituent Assembly acting as the Dominion Legislature, the life of the Essential Supplies Act was further extended upto the 26th January, 1955. Before the Act expired, the President promulgated the Essential Commodities

[1]The Essential Commodities Act, 1955 (10 of 1955).

[2]The Essential Supplies (Temporary Powers) Act, 1946 (24 of 1946).

[3]The India (Central Government and Legislature) Act, 1946 (9 and 10 Geo. 6 c. 39).

[4]See Basu, Commentary on the Constitution of India, (1964) Vol. 5, page 504.

Ordinance[1], which was replaced by the Essential Commodities Act[2], which is the Act now in force. Detailed history of the various resolutions of the Constituent Assembly and the notification issued by the Governor-General would be found in the under-mentioned decisions[3]-[4]-[5].

The brief historical resume given above will show the *special character* of the legislation on the subject.

Points suggested in comments.

144. One comment received by us suggests that these offences should be included in a new Chapter in the Indian Penal Code. The comment also offers a definition of profiteering as "selling a thing at a rate in excess of its controlled price", and a definition of hoarding as "storage in excess of a permissible quantity". It also points out, that the meaning of the term "Black-marketing" is obscure, and emphasises that the definition of that expression should include suppression of facts relating to the acquisition or disposal of things controlled by different special laws. The definitions suggested in this comment, however, themselves postulate the existence of special laws containing the necessary substantive provisions. For this very reason, such provisions cannot be inserted in the Penal Code.

West Bengal Act.

145. In this connection, we may refer to the West Bengal Black-marketing Act, 1948[6] (now repealed). Section 2 of that gave a very wide definition of "black-marketing", but almost every clause of that definition assumed the existence of another (special) law, *i.e.* a law which fixed prices, provided for rationing, or regulated the supply, distribution, sale, disposal, etc., of goods, or their storage, production or manufacture, acquisition or movement, etc. Thus, section 2(*a*) spoke of "selling or purchasing for purposes of trade any goods at a greater price than the maximum price fixed *by or under any law, notification,* or *order* for the time being in force for the sale of goods". Section 2(*b*) began thus—"otherwise than in accordance *with any law*, etc. selling or disposing of any articles rationed, etc.".

Addition of new provisions.

146. As regards the addition of *new* provisions concerning the offences of hoarding, black-marketing and profiteering, an amendment of the Indian Penal Code would not be convenient. The details of the stock which

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[1]The Essential Commodities Ordinance, 1955 (1 of 1955).

[2]The Essential Commodities Act, 1955 (10 of 1955).

[3]*Khoshed Ali* v. *The King*, A.I.R. 1950 Cal. 202.

[4]*Ramananda* v. *The State*, A.I.R. 1951 Cal. 120.

[5]*State* v. *Hira Lal*, A.I.R. 1951 Bom. 369.

[6]The West Bengal Black-marketing Act, 1948 (West Bengal Act 32of 1948) (now repealed).

can be lawfully possessed (hoarding), the conditions subject to which transactions may be entered into (black-marketing), and the maximum prices that could be charged (profiteering), would vary in respect of each commodity, and, therefore, a general and sweeping provision cannot conveniently be incorporated in the Indian Penal Code. We may also point out, that in respect of matters on which the existing provisions are found to be inadequate, it is open to Government to initiate amendments thereto or to introduce further special legislation, whenever necessary[1].

CATEGORY 6.—ADULTERATION

Adulteration (Category 6).

147. The sixth category of offences mentioned by the Santhanam Committee is—"Adulteration of food-stuffs and drugs".

Existing provisions.

148. The existing provisions as to these offences are listed separately[2]. Some provisions on the subject are contained in sections 272 to 276, Indian Penal Code. But special enactments on the subject that are now in force, are much more important, and prosecutions are usually filed under the special enactments.

Transfer not feasible.

149. The Prevention of Food Adulteration Act[3] contains elaborate provisions of a substantive, procedural and evidenciary character, which cannot possibly be transferred to the Indian Penal Code.

Section 2(*1*) of the Act contains an elaborate definition of the expression "adulterated", and clauses (*j*), (*k*) and (*l*) of that definition refer to the "prescribed" extent of colouring matter or preservative, or the "prescribed" standard of quality or purity, etc. The standard of quality and purity and limits of colouring matter can thus be ascertained only from the rules made under the Act. Section 19 bars the raising of certain defences by the vendor to the effect that he was ignorant of the nature, substance or quality of the food sold by him (except in certain cases). Section 16(*2*) empowers the Court to cause the offender's name, etc., to be published where the offender is a second or subsequent offender. Again, section 13(5) contains a rule of evidence as to the report of the public analyst. Section 21 confers higher powers upon Magistrates of the First Class in relation to the sentences that they can pass for offences under the Act. It would, obviously, be impracticable to transfer all these sections to the Indian Penal Code. It would not be convenient to

[1]See, for example, the Supply and Prices of Goods Act, 1950 (70 of 1950) which was repealed by the Repealing and Amending Act, 1957.

[2]See Appendix 6.

[3]The Prevention of Food Adulteration Act, 1954 (37 of 1954).

split them also, that is, to transfer the substantive provisions to the Penal Code, and to leave the remaining procedural provisions in the Act, as that is bound to create confusion.

150. A study of the Drugs and Cosmetics Act[1] will also show, that its penal provisions cannot be transferred to the Indian Penal Code. There are vast rule-making powers under sections 12, 16(2) and 33 of the Act, and breach of the rules may attract penalty under sections 13 and 27(*a*) read with sections 17(*e*), 17A(*e*) 18(*a*)(*iii*), 18(*a*)(*vi*), 18(*b*), etc. Then, there are special rules of evidence in sections 19 and 25(3). There are special provisions as to jurisdiction and procedure in sections 15, 32 and 36. There are provisions for enhanced punishment on second or subsequent conviction, in sections 13(2) and 30, and also a provision regarding offences by companies in section 34. Finally, there is provision for publication of particulars relating to sentences in section 35. To transfer the penal provisions to the Indian Penal Code would, in view of these special provisons, mean a virtual disintegration of the Act.

Addition of new provisions.

151. As regards the addition of new provisions, that is a matter concerning amendment of the relevant Acts.

Adulteration and public opinion.

152. The fact that we are not recommending transfer to the Indian Penal Code of the provisions as to adulteration[2] does not, of course, mean that we under-rate the gravity of the offence of adulteration. In fact, public opinion on the subject appears to be strong. A comment signed by several citizens residing in West Bengal has suggested, that persons guilty of adulteration of medicines should be punished with the death sentence along with confiscation of property, that persons guilty of adulteration of food should be punished with life imprisonment along with confiscation of property, and that in all cases of conviction, wide publicity through the Press, the cinema and the radio should be given. Another comment has suggested, that the relevant Acts may be amended so as to provide compulsory rigorous imprisonment and also fine, to be imposed on the convicted persons. One comment suggests, that sections 272 and 274 of the Indian Penal Code should be suitably amended, and that the maximum punishment for adulteration should be hanging, as such adulteration may sometimes cause death, and that the offence should be made cognizable.

If any amendments pertaining to sentence are required, those will have to be made to the relevant enactments relating to food and drugs.

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[1]The Drugs and Cosmetics Act, 1940 (23 of 1940).

[2]Para. 149-150, *supra*.

Failure of prosecutions

153. The failure of prosecutions under the Prevention of Food Adulteration Act is often put forth as a matter deserving serious consideration. And no doubt it is so. But such failures are not due to a defect in the penal provisions or in their being dealt with in special laws. The causes are to be found elsewhere.

154. Thus, prosecutions may fail because of defective reports of the Public Analyst[1] or delay in the examination of samples[2]. Sometimes, the rules as in force up-to-date are not brought to the notice of the court[3]. Complications may also arise where the procedure prescribed by the Act for taking samples is not followed[4]. The same difficulty may arise if the provisions of the Act requiring complaint by a particular person are not complied with[5].

155. In this connection, it must also be pointed out, that higher courts have not failed to impress upon the magistracy the importance of legislation relating to adulteration of food, and the need for ensuring that mere technicalities do not hamper or defeat the cause of justice[6].

CATEGORY 7.—THEFT AND MISAPPROPRIATION OF PUBLIC PROPERTY AND FUNDS.

Theft and misappropriation of public property and funds (Category 7).

156. The seventh category of the offences mentioned by the Santhanam Committee is—"Theft and misappropriation of public property and funds".

The existng provisions as to these offences are listed separately[7]. The offences are mainly dealt with—

(*i*) in the Indian Penal Code;

(*ii*) in the Prevention of Corruption Act, 1947; and

(*iii*) in special enactments relating to particular subjects.

Transfer to the Indian Penal Code of the provisions contained in the Prevention of Corruption Act, 1947, is not practicable, as the Act contains its own rules of evidence and procedure[8].

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[1]*Cf.* the cases cited in *State* v. *Gunjlal*, A.I.R. 1964 Pun. 475, 476, 477, paras. 2 and 6.

[2]*Municipal Corporation of Delhi* v. *Surja Ram*, (1965) 2 Cr. L. J. 571.

[3]*Cf. Mela Singh* v. *State*, A.I.R. 1964 Pun. 332, 333.

[4]*Cf. Food Inspector* v. *P. Kannan*, A.I.R. 1964 Kerala 261.

[5]*Cf. State* v. *Ishwar Saran*, A.I.R. 1964 All. 497.

[6]See *Delhi Municipality* v. *Jai Dayal*, A.I.R. 1964 Pun. 520, paras. 11 and 12.

[7]See Appendix 7.

[8]See sections 3, 4, 5, 5A and 6, Prevention of Corruption Act, 1947 (2 of 1957).

157. Transfer to the Indian Penal Code of the provisions of other special enactments under this category does not appear to be feasible, as the provisions are a part of the integrated schemes of the particular enactments. Transfer not feasible.

158. The addition of *new offences* under this category is a matter which need not be considered until any deficiency in the existing provisions is brought to notice. Addition of new provisions.

159. We, however, think that the *punishment* for the theft of public property should be enhanced, so as to provide a more stringent check on such thefts. We propose an amendment to the Indian Penal Code on the subject[1]. Theft is punishable under the Indian Penal Code (section 379), and aggravated forms thereof have also been dealt with in the same Code (sections 380, 381). It would not, therefore, be against the scheme of that Code to place the proposed provision in that Code[2]. Provision proposed for theft of public property.

160. As regards misappropriation of public property, the offence, if committed by a public servant, would, in most cases, fall under section 409, Indian Penal Code (Criminal breach of trust by a public servant, or by banker, merchant or agent). The maximum punishment for that offence is imprisonment for life or imprisonment of either description upto ten years, and also fine, which seems to be sufficiently deterrent. We do not, therefore, propose any increase in the punishment.

161. One of the comments received by us also states, that the offence of theft (or misappropriation) of *public property* is much graver than the same offence in respect of property of an individual or company, and should be adequately punished. Points suggested in comments.

Category 8.—Trafficking in licences

162. We now come to the eighth category of the offences mentioned by the Santhanam Committee, namely, "Trafficking in licences, permits etc.". Trafficking in licences, permits, etc. (Category 8).

There are no direct statutory provisions creating a *specific* offence of this nature. Some of the important enactments dealing with the control of industries, imports and exports and foreign exchange[3], seem, however, to imply, that ordinarily a licence, permit or similar other document issued under those enactments cannot be transferred for profit, at least where the competent authority imposes such conditions in the licences, etc.

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[1]See Appen 31, section 379A, I.P.C. (Proposed).

[2]See also para . 160 *infra.*

[3]For details , see Appendix 8.

163. The subject has been dealt with in the Report of the Committee at various places. The Committee has discussed the procedure for the scrutiny of applications received under the Industries (Development and Regulation) Act, 1951[1], and illustrated the unfair practices that may arise in the absence of field verification of progress reports, *e.g.*, the licensee utilising the services of sub-contractors instead of setting up the factory himself[2]. The Committee has made certain recommendations[3] regarding import and export control also. It has observed, that corruption in that sphere arose from (*i*) issue of licences or quota certificates in fictitious names, (*ii*) issue of licences to actual users on forged certificate and without proper scrutiny of documents, (*iii*) issue of licences to prospective exporters on the basis of false or forged orders of foreign suppliers, (*iv*) theft of blank licences, etc. by the staff and supply of the same to parties for value, (*v*) theft of issued licences by the staff at the time of the despatch or when returned by parties for revalidation, etc., and sale to other parties, (*vi*) applying for licences even after changes in the constitution or ownership of the importer's business, (*vii*) trafficking in licences, (*viii*) applying for licences in the name of fictitious firms, (*ix*) soliciting of licences, etc[4]. As regards import licences granted as export incentives, the Committee was told, that they were transferable and this caused serious damage to the domestic market and foreign exchange resources[5]. (It also referred[6] to the malpractice of material allowed to be imported for use in manufacturing *exportable* goods being sold for huge profits, and recommended that such offences should be punishable with imprisonment of at least 3 years and a fine which would be twice the market price of the imported goods).

Meaning of 'Trafficking' and points suggested in comments.

164. The Committee has not suggested any definition of trafficking. A definition of "trafficking" suggested in one of the comments is, "the outright sale of licenses and permits and allowing any other person besides the one intended, to enjoy the fruits of such licences and permits.".

Another comment states, that "trafficking" takes place when a licence is transferred without the permission of the competent authority, though such transfers are prohibited by law, or when a premium is charged on such transfers in spite of a prohibition under the law.

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[1]Report of the Santhanam Committee, pages 243 and 245.

[2]Report of the Santhanam Committee, page 247.

[3]Report of the Santhanam Committee, pages 247 and 249.

[4]Report of the Santhanam Committee, pages 252 to 254, para. 7, items (*iii*), (*iv*), (*v*), (*vii*), (*viii*), (*xv*), (*xx*), (*xxvii*) and (*xxviii*).

[5]Report of the Santhanam Committee, page 254, para. 9.

[6]Report of the Santhanam Committee, page 258, para. 10 (18).

165. It seems to us, that the matter can be more conveniently dealt with by a suitable provision in the law under which the licenses are issued. When a license is issued, a condition can be inserted that it shall not be transferable. Breach of the condition could be made punishable under the relevant enactment. Trafficking to be dealt with by special enactments

166. So far as licenses for importing or exporting goods are concerned, contravention of a condition in the license authorising the import or export is an offence under section 5 of the Imports Act[1-2-3]. And it would appear, that under clause 5(2) of the Export (Control) Order, 1962, it is deemed to be a condition of *every licence* that the licensee shall not (except with permission of the licensing authority, etc.) transfer the license, and that the goods for the export of which the licence is granted shall be the licensee's property at the time of export. Similar provision has been made by clause 5 of the Import (Control) Order, 1955.

This being the position, an unauthorised transfer of the license ("trafficking") would seem to be already covered, so far as import and export licenses are concerned[4].

167. If there are any practical difficulties in the enforcement of the relevant condition in the licence, those difficulties would not be solved by making a provision in the Indian Penal Code.

168. We may also state here that, as has been pointed out in one of the comments received on the proposals under consideration, the magnitude of the mal-practice of trafficking may vary with the particular enactment (*i.e.* the enactment which requires that the activity or operation or transaction in question should be licensed). For that reason also, it will be more appropriate to deal with the matter by a suitable provision in the special enactment concerned, rather than by a general provision in the Indian Penal Code. If a general provision (prohibiting trafficking) applicable to all licenses and permits is inserted, it might cover even a license or permit which is transferable under the enactment under which it is issued, and thus lead to inconsistency in the law. We do not, therefore, feel inclined to recommend a provision in the Indian Penal Code on the subject.

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[1]The Imports and Exports (Control) Act, 1947 (18 of 1947) (as amended in 1960).

[2]See *Best & Co.* v. *Additional Collector,* A.I.R. 1965 Cal. 478.

[3]It is understood that a Bill to provide for minimum penalties under section 5 is to be introduced shortly.

[4]See *Mohan Lal* v. *Jasjit Singh,* 1965) 1 Cr. Law Journal 379, (Calcutta High Court).

CONCLUSION

Problem of crime a complex one.

169. In the end, we should emphasise that the problem of checking crime in general, and of white-collar crimes in particular[1], is a complex one. It is much wider than the form and content of the penal law, or the placing of its provisions. The inhibitions which prevent a person from committing crime generally may have their origin in various factors which contribute to the emergence of conscience and the creation of a sense of guilt[2]. The sanctions imposed by the penal law constitute only one species of those inhibitions.

Causes of crime.

170. Crime is not a legal problem; it is a social and economic one. The sanctions which can effectively operate to check crime are not legal only. As has been observed[3]—

> "Among the basic elements in any culture are social values. These have been developed out of the historical experience of each society. Experiences and behaviour patterns which have brought the group satisfaction are positively valued. Experiences which have brought dissatisfaction are negatively valued. Sanctions are set by the society designed to "encourage approved behaviour and discourage disapproved behaviour. These sanctions are embodied in the folkways, mores, conventions, religious ideals and taboos, public opinion, and laws of a society, and may be promoted through education. Every society has to decide what kinds of behaviour shall be discouraged through law, and what kinds by appeal to other sanctions. We have seen in our society a great reliance on law and yet a considerable disrespect for many laws. Criminology is, strictly speaking, concerned only with acts which are made punishable under the criminal law.".

171. When we consider the question of preventing the commission of a *particular class of crimes*, the matter becomes still more complex, because then one has to consider not only the criminal instinct in general, but the more detailed question as to why the desire to commit the crimes *of that particular class arises.*

Appendices.

172. The Appendices to this Report are intended to furnish information regarding provisions of existing laws relevant to the subject-matter of this Report, provisions of the laws of certain other countries which may be of interest, and similar other material. Some of the Appendices also seek to analyse, in detail, the scope of certain provisions of existing laws, in order to show how far they cover

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[1]Para. 7, *et. seq. supra.*

[2]*Cf.* Barbara Wooten, Crime and the Criminal Law (The Hamlyn Lectures, 15th series), (1963), page 23.

[3]Taft and England, Criminology, (1964) page 275.

the offences which, according to the Santhanam Committee's Report, ought to be covered. It should be stated, that the Appendices relating to existing laws are illustrative only, and are not intended to be exhaustive.

A tentative draft of the amendments which we propose in the Indian Penal Code and in the Code of Criminal Procedure, 1398 is given in two of the Appendices[1].

1. J. L. KAPUR—*Chairman.*
2. K. G. DATAR
3. S. K. HIRANANDANI
4. T. K. TOPE
5. RAMA PRASAD MOOKERJEE

} *Members*[2]

P. M. BAKSHI,
Joint Secretary and Draftsman.

NEW DELHI;
The 11th February, 1966.

[1]Appendices 31 and 32.

[2]The post of Special Secretary, Legislative Department and Member Law Commission has not been filled up.

APPENDIX 1

EXISTING STATUTORY PROVISIONS REGARDING OFFENCES CALCULATED TO PREVENT OR OBSTRUCT THE ECONOMIC DEVELOPMENT OF THE COUNTRY AND ENDANGER ITS ECONOMIC HEALTH.

Acts listed inside—

(1) The Customs Act, 1962 (52 of 1962).

(2) The Atomic Energy Act, 1962 (33 of 1962).

(3) The Coffee Act, 1942 (7 of 1942).

(4) The Imports and Exports (Control) Act, 1947 (18 of 1947).

(5) The Essential Commodities Act, 1955 (10 of 1955).

(6) The Indian Standards Institution (Certification Marks) Act, 1952 (36 of 1952).

(7) The Industries (Development & Regulation) Act, 1951 (65 of 1951).

(8) The Tea Act, 1953

(9) The Coir Industry Act, 1953.

(10) The Foreign Exchange Regulation Act, 1947.

(11) The Oilfields (Regulation & Development) Act, 1948 (53 of 1948).

(12) The Reserve Bank of India Act, 1934.

(13) The Forward Contracts (Regulation) Act, 1952 (14 of 1952).

(14) The Mines & Minerals etc. Act, 1957 (67 of 1957).

(15) The Securities Contracts etc. Act, 1956 (42 of 1956).

Name of the Act	Section Number	Gist of the Section
(1)	(2)	(3)
1. The Customs Act, 1962 (52 of 1962). (As to confiscation and penalties, see sections 111 and 112 *et seq*. As to false declaration see section 132.	135	Without prejudice to any action that may be taken under this Act, if any person— (*a*) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or (*b*) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under *section* 111, he shall be punishable,— (*i*) in the case of an offence relating to any of the goods to which *section* 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to five years and with fine: Provided that, in the absence of special and adequate reasons to the contrary, to be recorded in the judgement of the court, such imprisonment shall not be less than six months;

(1)	(2)	(3)
The Custom Act, 1962 (*contd.*)		(*ii*) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both. (As to offences under the Act being regarded as "economic crimes", and the need for punishing severely such offences, see *State* v. *Kumari Dhrupati Bhawnani*, A.I.R. 1965 Bombay 6.)
2. The Atomic Energy Act, 1962 (33 of 1962).	24	The section makes contravention of orders made under *sections* 14, 17 and 18 punishable with imprisonment for a term which may extend to 5 years. Section 14, *inter alia*, provides that the Central Government may, by order, prohibit, except under a licence, the production, possession, use, disposal, *export* or *import* of prescribed substances or other minerals, or of any plant designed for development of atomic energy etc.
3. The Coffee Act, 1942 (7 of 1942).	20	Section 20 provides that no coffee shall be exported from India otherwise than by the Board or under an authorisation granted by the Board, and the provisions of the Sea Customs Act have been made applicable to any violation of this provision. The Board is constituted under section 4. Section 21 deals with import of exported coffee.
4. The Imports and Exports (Control) Act, 1947 (18 of 1947).	5	Section 5 makes the contravention or attempts at contravention of any order made under the Act punishable with imprisonment for a term which may extend to one year. If any person contravenes or attempts to contravene, or abets a contravention of, any order made or deemed to have been made under this Act, or any condition of a licence granted under any such order, he shall, without prejudice to any confiscation or penalty to which he may be liable under the

		provisions of the Sea Customs Act, 1878, as applied by sub-section (2) of section 3, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both. (As to the need for punishing such offences severely, see *State* v. *Kumari Dhrupati*, A.I.R. 1965 Bombay 6).
5. The Essential Commodities Act, 1955 (10 of 1955)	7	The section makes contravention of orders made under section 3 as punishable with imprisonment which varies from one year to three years in certain specified circumstances and also gives discretion to the court to make an order imposing a sentence of fine alone. Section 3 gives powers to the Central Government to control production, supply and distribution of essential commodities.
6. The Indian Standards Institution (Certification Marks) Act, 1952 (36 of 1952).	13	The section provides penalty for contravention of the provisions of section 5 and section 6 of the Act. Section 5 prohibits improper use of the standard mark or any colourable imitation thereof. Section 6 prohibits the use without previous permission of the Institution, of any name resembling the name of the Indian Standards Institution, etc.
7. Industries (Development & Regulation) Act, 1951 (65 of 1951).	24	This section makes contravention or attempts at contravention of provisions of sections 10, 11, 11A, 13(1), 18B and 18G and 29B(2) or direction or order made thereunder punishable with imprisonment which may extend to 6 months or with fine. Section 3 makes it obligatory for every owner of existing industrial undertaking to have it registered in the prescribed manner. Section 10 requires registration. Section 11 prohibits every person from establishing a new industrial undertaking except under a licence issued by the Central Government. Section 11A makes it obligatory on every owner of industrial undertaking to obtain a licence for producing or manufacturing a new article. Similar provisions are contained in section 13. Section 24A punishes false statements.

(1)	(2)	(3)
Industries (Development and Regulation) Act, 1951 (*contd.*)	18G	Section 18G gives powers to the Central Government to control supply, distribution and prices of certain articles.
8. The Tea, Act, 1953.	3	The section makes the breach of the provision of section 18(i) & (ii) punishable as if it were an offence under the Customs Act. Section 18 provides that no consignment of tea shall be exported except under a licence by the Central Government or the Tea Board.
9. The Coir Industry Act, 1953.	20	The section makes contravention of the provision of section 12 punishable with fine which may extend to Rs. 500/-. Section 12 prohibits the export of coir fibre, coir yarn and coir products except under a licence issued by or on behalf of the Coir Board.
10. Foreign Exchange Regulation Act, 1947.	23	The section makes a person contravening the provisions of sections 4, 5, 9 or sub-section (2) of section 12 or of any rule, order, direction made therein, liable to penalty not exceeding three times the value of the foreign exchange in respect of which contravention has taken place, or Rs. 5,000/- whichever is more, as also punishable upon conviction with imprisonment for a term which may extend to two years, or with fine, or with both. Contravention of provisions of section 19 is also punishable with imprisonment for a term which may extend to two years, or with fine, or with both. Section 4 places restrictions on persons resident in India on dealing in foreign exchange. Section 5, *inter alia*, places restrictions on persons resident in India from making any payment to or for the credit of any person resident outside India. Section 9 empowers the Central Government to purchase any foreign exchange in the possession of any person resident in India at a price fixed by the Government itself.

			Section 19 empowers the Central Government to direct owners of foreign exchange or foreign securities to make a return thereof to the Reserve Bank within such a period as may be specified. The Central Government or the Reserve Bank may also require any such person to furnish to the Government or the Bank any information, book or other document as may be required by the order to be so produced or furnished.
11.	The Oilfields (Regulation & Development) Act, 1948.	9	Section 9 provides, that the contravention of any rule made under the provisions of the Act, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 5 empowers the Central Government to make rules for regulating the grant of mining leases, or for prohibiting the grant of such leases, in respect of any mineral oil or any area. Section 6 empowers the Central Government to make rules for the conservation and development of mineral oils, and, *inter alia,* for regulating drilling, redrilling, deepening, plugging and abandoning of oil wells, and for the limitation or prohibition of such operations, and for taking of remedial measures to prevent waste of or damage to oil.
12.	The Reserve Bank of India Act, 1934.	32	The section makes contravention of provision of section 31 as punishable with fine which may extend to the amount of the bill, hundi, pronote or engagement in respect whereof the offence is committed. Section 31 prohibits any person in India from drawing, accepting or making or issuing any bill of exchange in the promissory note or engagement for the payment of money, payable to bearer on demand.

(1)	(2)	(3)
13. Forward Contracts (Regulation) Act, 1953	20	The section, *inter alia*, penalises the person who is a member of any association, other than a recognised association to which a certificate of registration has not been granted under the Act. The penalty provided for the offence is with imprisonment which may extend to one year, or with fine of not less than Rs. 1,000/-, or with both.
14. Mines & Minerals (Regulation & Development) Act, 1957.	21	This section makes contravention of provisions of sub-section (1) of section 4 punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Section 4(1) prohibits any person from undertaking any prospecting or mining operation in any area, except under or in accordance with the terms and conditions of a prospecting licence, or a mining licence granted under the Act.
15. Security Contracts (Regulation) Act, 1956.	23	The section makes it an offence for a person to own or keep a place other than a recognised stock exchange for use for the purposes of entering into any contracts in contravention of the provisions of the Act. It further provides penalties for entering into any contract in contravention or the provisions of sections 13, 16, 17 and 19, and for canvassing or advertising for any business connected with contracts without being a member of a recognized stock exchange.

13 Section 13 empowers the Central Government to notify that contracts other than between members of a recognized stock exchange, shall be illegal in any area to which the said notification may apply. Section 16 empowers the Government to prohibit contracts to prevent undesirable speculation in specified securities. Section 17 empowers the Government to make it obligatory on persons in areas that may be specified to take a licence for dealing in securities.

19 Section 19 prohibits persons from being members of any stock exchange other than a recognised one for the purposes of assisting in, entering into/or performing contracts in securities.

APPENDIX 2

EXISTING STATUTORY PROVISIONS REGARDING EVASION OR AVOIDANCE OF TAX OR DUTY AND THE CONSEQUENT PENALTY THEREOF.

1. The Indian Penal Code s. 177, 181, 191, 192, 198, 199 read with s. 136, Income Tax Act, 1961 etc.
2. Indian Stamp Act, 1899 (2 of 1899) (Section 62).
3. The Central Excises and Salt Act, 1944 (I of 1944). (Section 9, 17 & 24).
4. The Estate Duty Act, 1953 (34 of 1953) Sections 59 and 60.
5. The Terminal Tax on Railway Passengers Act, 1956 (69 of 1956) (No provision).
6. The Central Sales Tax Act, 1956 (74 of 1956) Sections 9(3), 10, 13(5).
7. The Wealth Tax Act, 1957 (27 of 1957) Sections 17, 18, 36.
8. The Expenditure Tax Act, 1957 (29 of 1957) Sections 16, 17, 32.
9. The Gift Tax Act, 1958 (18 of 1958) Sections 16, 17, 35.
10. The Income Tax Act, 1961 (43 of 1961) Sections 276, 277, 278, 281.
11. The Customs Act, 1962 (52 of 1962) Section 135 (This Act repeals the Sea Customs Act, 1878 and the Land Customs Act, 1924).
12. Super Profits Tax Act, 1963 (14 of 1963) Sections 10, 11, 19 and 22.
13. The Companies (Profits) Surtax Act, 1964 (7 of 1964) Sections 8, 20, 21, 22.

1. THE INDIAN PENAL CODE (45 OF 1860)

The following sections of the Indian Penal Code are relevant in connection with evasion of taxes—

Section	177	
Section	181	
Section	191, 192, 199	Read with section 136, Income Tax-Act, 1961, and similar provisions in other enactments relating to taxation.

APPENDIX 2 (contd.)

2. THE INDIAN STAMP ACT, 1899 (2 OF 1899)

Section 62.—*Penalty for executing, etc., instrument not duly stamped.*

(1) Any person—

(*a*) drawing, making, issuing, endorsing or transferring or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange payable otherwise than on demand, or promissory note without the same being duly stamped; or

(*b*) *executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped;* or

(*c*) voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punishable with fine which may extend to five hundred rupees: Provided that, when any penalty has been paid in respect of any instrument under section 35, section 40 or section 61, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty;

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued is the managing director or secretary or other principal officer of the company, shall be punishably with fine which may extend to five hundred rupees.

3. THE CENTRAL EXCISES AND SALT ACT, 1944 (I OF 1944)

Section 9.—Whoever commits any of the following offences, namely:—

(*b*) *evades the payment of any duty payable under this Act,* shall for every such *offence* be punishable with imprisonment for a term which may extend to six months and with fine which may extend to two thousand rupees or with both.

Section 17.—Any owner or occupier of land or any agent of such owner or occupier in charge of the management of that land, who wilfully connives at any offence against the provisions of this Act or of any rules made thereunder shall for every such offence be punishable with

APPENDIX 2 (contd.)

Section 24—When any excisable goods are carried by sea in any vessel other than a vessel of the burden of three hundred tons and upwards, the owner and master of such vessel shall each be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

4. THE ESTATE DUTY ACT, 1953 (34 OF 1953)

Section 56 deals with grant of representation.

Section 59.—*Property escaping assessment*: If the Controller,—

(*a*) has reason to believe that by reason of the omission or failure on the part of the person accountable to submit an account of the estate of the deceased under section 53 or section 56 or to disclose fully and truly all material facts necessary for assessment, any property chargeable to estate duty has escaped assessment by reason of undervaluation of the property included in the account or of omission to include therein any property which ought to have been included or of assessment at too low a rate or otherwise, or

(*b*) has, in consequence of any information in his possession, reason to believe notwithtanding that there has not been such omission or failure as is referred to in clause (*a*) that any property chargeable to estate duty has escaped assessment, whether by reason of undervaluation of the property included in the account or of omission to include therein any property which ought to have been included, in the or of assessment at too low a rate or otherwise,

he may at any time, subject to the provisions of section 73A, require the person accountable to submit an account as required under section 53 and may proceed to assess or reassess such property as if the provisions of section 58 applied thereto.

Section 60.—*Penalty for default or concealment*:

(*1*) If the Controller, the Appellate Controller or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to deliver [illegible] property of the deceased under

APPENDIX 2 (contd.)

(b) has without reasonable cause failed to comply with a notice under sub-section (2) of section 58; or

(c) *has concealed the particulars of the property* of the deceased or deliberately furnished inaccurate particulars thereof; or

(d) being a company referred to in section 20A fails without reasonable cause, to pay the amount of estate duty due from the company under that section within the time specified in this behalf,

he or it may, by order in writing, direct that—such person shall pay *by way of penalty*—

(i) in the case referred to in clause (a) or clause (d), in addition to the amount of the estate duty payable by him; a sum not exceeding twice the amount of such duty, and

(ii) in the case referred to in clause (b) or clause (c) in addition to the amount of estate duty payable by him, a sum not exceeding twice the amount of the estate duty, if any, which would have been avoided if the principal value shown in the account of such person had been accepted as correct.

(2) No order shall be made under sub-section (1) unless the person concerned has been given a reasonable opportunity of being heard.

5. THE TERMINAL TAX ON RAILWAY PASSENGERS ACT, 1956 (ACT 69 OF 1956)

This Act contains no provision as to evasion or avoidance of Tax.

6. THE CENTRAL SALES TAX ACT, 1956 (74 OF 1956)

Section 9—Levy and collection of tax and penalties:

(3) The authorities for the time being empowered to assess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India and subject to any rules made under this Act, assess, collect and enforce payment of any tax, including any penalty, payable by a dealer under this Act in the same manner as the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, appeals, reviews, revisions, references, penalties and compounding of offences, shall apply accordingly:

Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government

may, by rules made in this behalf, make necessary provision for all or any of the matters specified in this sub-section, and such rules may provide that a breach of any rule shall be punishable with fine which may extend to five hundred rupees; and where the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

Section 10.—*Penalties*:

If any person—

(*a*) fails to get himself registered as required by section 7; or

(*b*) being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration; or

(*c*) not being a registered dealer, falsely represents when purchasing goods in the course of inter-State trade or commerce that he is a registered dealer; or

(*d*) after purchasing any goods for any of the purposes specified in clause (*b*) of sub-section (*3*) of section 8 fails without reasonable excuse, to make use of the goods for any such purpose;

(*e*) has in his possession any form prescribed for the purpose of sub-section (*4*) of section 8 which has not been obtained by him or by his principal or by his agent in accordance with the provisions of this Act or any rules made thereunder;

(*f*) collects any amount by way of tax in contravention of the provisions contained in section 9A,

he shall be punishable with simple imprisonment which may extend to six months, or with fine, or with both; and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continues.

Section 13.—*Powers to make rules*:

(*5*) In making any rule under this section the State Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees and when the offence is a continuing offence, with a daily fine which may extend to fifty rupees for every day during which the offence continue.

7. THE WEALTH-TAX ACT, 1957 (27 OF 1957)

Section 17.—*Wealth escaping assessment*: If the Wealth Tax Officer –

(*a*) has reason to believe *that by reason of the omission or failure on the part of the assessee to make*

APPENDIX 2 (contd.)

a return of his net wealth under section 14 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, the net wealth chargeable to tax *has escaped assessment* for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or

(*b*) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission *or failure* as is referred to in clause (*a*), that net wealth chargeable to tax *has escaped assessment for that year*, whether by reason of under-assessment or assessment at too low a rate or otherwise he may, in cases falling under clause (*a*) at any time within eight years and in cases falling under clause (*b*) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 14, and may proceed to assess or reassess such net wealth, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

Section 18.—*Penalty for concealment*:

(*1*) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his net wealth which he is required to furnish under sub-section (*1*) or sub-section (*2*) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 16; or

(*c*) *has concealed the particulars of his* assets or deliberately furnished inaccurate particulars of his assets or debts,

he or it may, by order in writing direct that such person shall pay by way of penalty—

(*i*) in the case referred to in clause (*a*), in addition to the amount of wealth-tax payable by him, a sum not exceeding one-and-a-half times the amount of such tax, and

(*ii*) in the case referred to in clause (*b*) or clause (*c*) in addition to the amount of wealth-tax payable by him, a sum not exceeding one-and-a-half times the amount of the tax, if any, which would have been

avoided if the net wealth returned by such person had been accepted as correct.

(2) No order shall be made under sub-section (1) unless the person concerned has been given reasonable opportunity of being heard.

(3) No prosecution for an offence under this Act shall be instituted in respect of the same facts in relation to which a penalty has been imposed under this section.

(4) The Wealth-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Wealth-tax.

Section 36—Prosecutions:

(1) If a person fails without reasonable cause—

(a) to furnish in due time any return mentioned in section 14;

(b) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (2) or sub-section (4) of section 16 such accounts, records and documents as are referred to in the notice;

(c) to furnish within the time specified any statement or information which such person is bound to furnish to the Wealth-tax Officer under section 38;

he shall, on conviction before a magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(2) If a person makes a statement in a verification mentioned in section 14 or section 23 or section 24 or section 26 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

(3) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

(4) The Commissioner may either before or after the institution of proceedings compound any such offence.

Explanation.—For the purposes of this section, "Magistrate" means a Presidency Magistrate, a Magistrate of the first class or a Magistrate of the second class specially empowered by the Central Government to try offences under this Act.

APPENDIX 2 (contd.)

3. THE EXPENDITURE TAX ACT, 1957 (29 OF 1957)

Section 16.—*Expenditure escaping assessment*:

If the Expenditure-tax Officer.—

(*a*) has reason to believe that by reason of the omission or failure on the part of the assessee to make a return of his expenditure under section 13 for any assessment year, or to disclose fully and truly all material facts necessary for his assessment for that year, the expenditure chargeable to tax has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or

(*b*) has in consequence of any information in his possession reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (*a*), that the expenditure chargeable to tax has escaped assessment for any assessment year, whether by reason of under-assessment or assessment at too low a rate or otherwise,

he may, in cases falling under clause (*a*) at any time within eight years and in cases falling under clause (*b*) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 13, and may proceed to assess or reassess such expenditure, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

Section 17.—*Penalty for concealment*:

If the Expenditure Tax Officer, appellate Assistant Commissioner, Commissioner, or appellate Tribunal in the course of any proceedings under this Act is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return of his expenditure which he is required to furnish under sub-section (*1*) or sub-section (*2*) of section 13 or section 16, or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 15 or

(*c*) has concealed the particulars of any expenditure or deliberately furnished inaccurate particulars thereof, he, may by order in writing direct that such person shall pay by way of penalty....

Section 32.—*Prosecutions*:

(*1*) If a person fails without reasonable cause—

(*a*) to furnish in due time any return mentioned in section 13;

APPENDIX 2 (contd.)

(*b*) to produce, or cause to be produced on or before the date mentioned in any notice under sub-section (*2*) or sub-section (*4*) of section 15 such accounts, records and documents as are referred to in the notice;

(*c*) to furnish within the time specified any statement or information which such person is bound to furnish to the Expenditure-tax Officer under section 34;

he shall, on conviction before a Magistrate, be punishable with fine which may extend to ten rupees for every day during which the default continues.

(*2*) If a person makes a statement in a verification mentioned in section 13, section 21, section 22, or section 24, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(*3*) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

(*4*) The Commissioner may either before or after the institution of proceedings compound any such offence.

Explanation.—For the purposes of this section "Magistrate" means a Presidency Magistrate, a Magistrate of the first class, or a Magistrate of the second class specially empowered by the Central Government to try offences under this Act.

9. THE GIFT-TAX ACT, 1958 (18 OF 1958)

Section 16.—Gift escaping assessment:

(*1*) If the Gift-tax officer—

(*a*) has reason to believe that by reason of omission or failure on the part of an assessee to make a return under section 13 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, any taxable gift has escaped assessment for that year, whether by reason of under-assessment or assessment at too low a rate or otherwise; or

(*b*) has, in consequence of any information in his possession, reason to believe, notwithstanding that there has been no such omission or failure as is referred to in clause (*a*), that any taxable gift has escaped assessment for any year, whether by reason of under-assessment or assessment at too low a rate or otherwise;

he may, in cases falling under clause (*a*) at any time within eight years and in cases falling under clause (*b*) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (*2*) of section 13, and may proceed to assess or reassess any taxable gift which has escaped assessment, and the provisions of this Act shall, so far as may be, apply as if the notice had issued under that sub-section.

(*2*) Nothing containing in this section limiting the time within which any proceedings for assessment or re-assessment may be commenced shall apply to an assessment or re-assessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 22, section 23, section 24, section 26 or section 28.

Section 17.—*Penalty for default and Concealment.*

(*1*) If the Gift-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(*a*) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (*1*) or sub-section (*2*) of section 13, or section 16 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(*b*) has without reasonable cause failed to comply with a notice under sub-section (*2*) or sub-section (*4*) of section 15; or

(*c*) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof, he or it may, by order in writing, direct that such person shall pay by way of penalty—

(*i*) in the case referred to in clause (*a*), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and

(*ii*) in the case referred to in clause (*b*) or clause (*c*), in addition to the amount of gift-tax payable by him, a sum not exceeding one and a half times the amount of the tax, if any, which would have been avoided if the return made by such person under section 13, section 14, or section 16, as the case may be, had been accepted as correct.

(*2*) No order shall be made under sub-section (*1*) unless the person concerned has been given a reasonable opportunity of being heard.

APPENDIX 2 (contd.)

(3) No prosecution for an offence under this Act shall be instituted in respect of the same facts in relation to which a penalty has been imposed under this section.

(4) The Gift-tax Officer shall not impose any penalty under this section without the previous approval of the Inspecting Assistant Commissioner of Gift-tax.

Section 35.—*Prosecution.*

(1) If any person fails without reasonable cause—

(a) to furnish in due time any return of gifts under this Act;

(b) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (2) or sub-section (4) of section 15, such accounts, records and documents as are referred to in the notice;

(c) to furnish within the time specified any statement or information which such person is bound to furnish to the Gift-tax Officer under section 37,

he shall, on conviction before a Magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(2) If a person makes a statement in a verification in any return of gifts furnished under this Act or in a verification mentioned in sections 22, 23 or 25 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall on conviction before a Magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand or with both.

(3) A person shall not be proceeded against for an offence under this section except at the instance of the Commissioner.

Explanation

For the purposes of this section "Magistrate" means a Presidency Magistrate; a Magistrate of the first class or a Magistrate of the second class specially empowered by the Central Government to try offences under this Act.

10. THE INCOME-TAX ACT, 1961 (43 OF 1961)

Section 276.—*Failure to make payments or deliver returns or statements or allow inspection*:

If a person fails without reasonable cause or excuse—

(a) to grant inspection or allow copies to be taken in accordance with the provisions of section 134;

APPENDIX 2 (contd.)

(*b*) to furnish in due time any of the returns or statements mentioned in section 133, sub-section (2) of section 139, section 206, section 285 or section 286;

(*c*) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (*1*) of section 142, such accounts and documents as are referred to in the notice;

(*d*) to deduct and pay tax as required by the provisions of Chapter XVII-B or under sub-section (*2*) of section 226; or

(*e*) to furnish a certificate required by section 203, he shall be punishable with fine which may extend to ten rupees for every day during which the default continues.

As to penalties imposable by Income Tax Officers, see Sections 270 to 274 Income Tax Act, 1961.

Section 277.—False statement in declaration, (As amended by section 41 of the Finance Act, 1964—Act 5 of 1964):

If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment *for a term which may* extend to two years;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

Section 278.—Abetment of false return, etc. (As amended by the Finance Act, 1964 section 42):

If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which may extend to two years:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months.

Section 281.—Transfers to defraud revenue void:

Where, during the pendency of any proceeding under this Act, any assessee creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the

APPENDIX 2 (contd.)

revenue, such charge or transfer shall be void as against any claim in respect of any tax of any other sum payable by the assessee as a result of the completion of the said proceeding:

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act.

11. THE CUSTOMS ACT, 1962 (52 OF 1962)

Section 135.—*Evasion of duty or prohibitions*:

Without prejudice to any action that may be taken under this Act, if any person—

(*a*) is in relation to any goods in any way *knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon* or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods, or

(*b*) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111,

he shall be punishable—

(*i*) in the case of an offence relating to any of the goods to which section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to five years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than six months;

(*ii*) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both.

12. SUPER PROFITS TAX ACT, 1963 (14 OF 1963)

Sections 10, 19, 21 *and* 22 *may be seen.*

13. THE COMPANIES (PROFITS) SURTAX ACT, 1964 (7 OF 1964)

Section 8.—*Profits escaping assessment*:

If—

(*a*) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part

of the assessee to make a return under section 5 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for any assessment year, chargeable profits for that year have escaped assessment or have been under-assessed or assessed at too low a rate or have been made the subject of excessive relief under this Act, or

(*b*) notwithstanding that there has been no omission or failure as mentioned in clause (*a*) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that chargeable profits assessable for any assessment year have escaped assessment or have been under-assessed or assessed at too low a rate or have been the subject of excessive relief under this Act,

he may, in cases falling under clause (*a*) at any time, and in cases falling under clause (*b*) at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under section 5, and may proceed to assess or re-assess the amount chargeable to surtax, and the provisions of this Act, shall, so far as may be, apply as if the notice were a notice issued under that section.

Section 20.—*Failure to deliver returns etc.*

If any person fails without reasonable cause to furnish in due time any return under sub-section (*2*) of section 5, or to produce, or cause to be produced, any accounts or documents required to be produced under section 6, he shall be punishable with fine which may extend to five hundred rupees, and with a further fine which may extend to ten rupees for every day during which the default continues.

Section 21.—*False statements*:

If a person makes in any return furnished under section 5, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 22.—*Abetment of false returns, etc.*

If a person makes or induces in any manner another person to make and deliver any account, statement or declaration relating to chargeable profits liable to surtax which is false and which he either knows to be false or does not believe to be true, he shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

APPENDIX 3

EXISTING STATUTORY PROVISIONS PENALISING MISUSE OF POSITION BY PUBLID SERVANTS (OTHER THAN THEFT, BRIBERY, MISAPPROPRIATION AND BREACH OF TRUST), OCCURRING IN VARIOUS STATUTES

Offences regarding misuse of position, etc.

The Act	Section number	Gist of the Section
1	2	3
1. The Prevention of Corruption Act, 1947 (2 of 1947)	5(1)(d) & 5(2)	If a public servant, by corrupt or illegal means or by otherwise abusing his position as public servant, obtains for himself or for any other person, *any valuable or any other pecuniary advantage, he shall be deemed to have committed* the offence of "criminal misconduct in the discharge of his duties" as defined in section 5(1)(d) and shall be punishable under section 5(2) with imprisonment for a term which shall not be less than one year, but which may extend to 7 years, and shall also be liable to fine; provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.
2. The Indian Penal Code (45 of 1860)	(i)168	Public servant unlawfully engaging in trade.
	(ii)169	Public servant unlawfully buying or bidding for property.
	(*iii*)217	Public servant disobeying directions of the law with intent to save person from punishment or property from forfeiture, is liable to imprisonment which may extend to two years, or with fine, or with both.
	(iv)218	Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

		(v)219	Public servant in judicial proceeding corruptly making report, order, verdict or decision which he knows is contrary to law.
		(vi)220	Whoever, having legal authority to commit persons for trial or to confinement, or to keep persons for confinement, corruptly or maliciously commits any person for trial or confinement or keeps any person in confinement in the exercise of that authority, knowing that in so doing, he is acting contrary to law, is punishable with imprisonment which may extend to seven years, or with fine, or with both.
		(vii)221	Intentional omission to apprehend on the part of public servant bound to apprehend.
		(viii)222	Intentional omission to apprehend on the part of the public servant, bound to apprehend person under sentence or lawfully committed.
		(ix)225A	Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for in the Indian Penal Code.
3. The Indian Post Office Act, 1898	(6 of 1898).	(i)54(c)	Whoever, being an officer of the Post Office, being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereto which is not chargeable under this Act, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.
		*(iv)*56	An Officer of the Post Office, who sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud

1	2	3
The Indian Post Office Act, 1898 (6 of 1898) —*contd.*	(ii)56	the Government of the postage on such postal article, is made punishable with imprisonment for a term which may extend to two years, and is also made punishable with fine.
	(iii)60	Whoever, being appointed to sell postage stamps — (*a*) takes from any purchaser for any postage stamp or quantity of postage stamps, a *price higher* than that fixed by any rule made under section 16(3)(a), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 200/-, or with both; or (*b*) commits a breach of any other rule made under section 16 (such as regarding fixation of price of postage stamps, regulating the custody, supply and sale of postage stamps and prescribing the duties and remunerations of persons selling postage stamps etc. etc.), shall be punishable with fine which may extend to Rs. 200/-.
4. The Prison Act, 1894 (9 of 1894) . .	42 (later part)	An officer of a prison who, contrary to any rule under section 59 of the Prisons Act, knowingly suffers any prohibited article to be introduced into or remove from any prison, to be possessed by any prisoner, or to be supplied to any person outside the limits of the prison, or communicates or attempts to communicate with any person or abets in such an offence, is made liable to imprisonment for a term not exceeding six months, or to fine not exceeding rupees 200/-, or to both.

5. The Reformatory Schools Act, 1897 (8 of 1897).	Section 27 (later part).	Any officer or person incharge of a reformatory school who, contrary to any rule made under section 26 of this Act, knowingly suffers any prohibited article to be introduced into or removed from any reformatory school or contrary to any such rule, communicates or attempts to communicate with any youthful offender outside the limits of the reformatory school or abets in such offence; is made liable to imprisonment for a term not exceeding six months, or with fine not exceeding Rs. 220/-, or to both.
6. The Income-Tax Act, 1961 (43 of 1961)	Section 280 read with section 137(2).	A public servant who discloses any particulars, the disclosure of which is prohibited by section 137, is made punishable with imprisonment which may extend to six months, and also to fine.
7. The Customs Act, 1962 (52 of 1962)	(i) 136(1)	If any officer of Customs enters into or acquiesces in any agreement to do, abstain from doing, permits, conceals or connives at any act or thing whereby any duty of customs leviable on any goods or things prohibited for the time being, enforced under this Act, may be evaded, he is made punishable with imprisonment for a term which may extend to two years, or with fine or with both.
	(ii) 136(2)	If any officer of Customs corruptly requires any person to be searched for goods liable to consfication or any document relating thereto, or wrongfully arrests any person or wrongfully searches or authorises any other officer of Customs to search any place, he is made punishable with inprisonment for a term which may extend to six months, or with fine, or with both.
	(iii) 136(3)	If any officer of Customs wrongfully discloses any particulars learnt by him in his official capacity in respect of any goods, he is made punishable with

1	2	3
The Customs Act, 1962 (52 of 1962)—*contd.*		imprisonment for a term which may extend to six months, or with fine, or with both.
8. The Manipur (Sale of Motor Spirit & Lubricants) Taxation Act, 1962 (55 of 1962).	27	If any officer or person exercising power under this Act, wrongfully enters or searches, or causes to be entered or searched, any building, vessel, vehicle or building; or vexatiously or unnecessarily seizes the property of any person; or vexatiously and unnecessarily detains or searches any person, he is made punishable with fine which may extend to Rs. 500/-.
9. The Indian Forest Act, 1927 (16 of 1927)	62	Any forest officer or police officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act, is punishable with imprisonment which may extend to six months, or with fine which may extend to Rs. 500/-, or with both.
10. The Factories Act, 1948 (63 of 1948)	96	Whoever (including a public servant) publishes or discloses to any person the results of an analysis of the Government Analyst, made under section 91 except in so far as they may be necessary for the purposes of a prosecution for any offence punishable under this Act; is made punishable with imprisonment which may extend to three months, or with fine, or with both.

11. The Estate Duty Act, 1953 (34 or 1953)	80	The provisions of section 54 of the old Indian Income-tax Act, 1922 which made penal the disclosure by any public servant of any particulars contained in any statement made or return furnished or accounts or documents produced under the provisions of that Act or in any evidence given or affidavit or deposition made in the course of any such proceeding under that Act or in any record of any assessment proceeding or any proceeding relating to the recovery on demand prepared for the purposes of that Act, had been made applicable to the Estate Duty Act, 1953.
12. The Wealth Tax Act, 1957 (27 of 1957)	42(1)	This is similar to section 80 of the Estate Duty Act and makes the provisions of section 54 of the (old) Indian Income-tax Act, 1922 applicable to this Act.
13. The Expenditure Tax Act, 1957 (29 of 1957).	38(1)	This is similar to section 80 of the Estate Duty Act and makes the provisions of section 54 of the old Indian Income-tax Act, 1922 applicable to this Act.
14. The Gift Tax Act, 1958 (18 of 1958)	41(1)	This is similar to section 80 of the Estate Duty Act and makes the provisions of section 54 of the old Indian Income-tax Act, 1922 applicable to this Act.

APPENDIX 4

EXISTING STATUTORY PROVISIONS REGARDING OFFENCES IN THE NATURE OF BREACHES OF CONTRACTS RESULTING IN DELIVERY OF GOODS NOT ACCORDING TO SPECIFICATIONS.

There are no direct provisions penalising such breaches of contracts for delivery. But these may be noted:—

Section 420, Penal Code —	Punishes "cheating"[1].
Rule 125(3)(dd), Defence of India Rules, 1962.	Authorises the making by the Government of an order for securing the production, manufacture, supply or sale, according to the prescribed *standards* and *specifications* of any article or thing which appears to the Government as essential to any of the purposes specified in Rule 125(2).
The various enactments relating to weights and measures (listed in the Second Schedule to the Standards of Weights and Measures Act, 1966).	These would be relevant for the use of false weights or measures.
Section 5, Indian Standards Institution Act, 1952 read with section 13. See also the Agricultural Produce (Grading and Marketing) Act, 1937 and the Drugs Act, 1940.	This would be relevant for goods falsely bearing the standard mark.

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[1]. *See Banwari Lal v. State A.I.R. 1963 S.C. 162.*

APPENDIX 5

EXISTING STATUTORY PROVISIONS AS TO HOARDING AND BLACK-MARKETING

Name of the Act	Section number	Gist of the section	Penalty
1	2	3	4
The Essential Commodities Act, 1955 (10 of 1955).	3(1)	Section 3(1) empowers the Central Government to regulate the production, supply, etc., of essential commodities. Section 3(2), in particular, states that such order may be, "(c) for controlling the price at which an essential commodity may be bought, or sold ; (*d*) regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity ; (*e*) for prohibiting the withdrawal from sale of any essential commodity ordinarily kept for sale ; for requiring any person holding in stock any essential commodity to sell the whole or a specified part of the stock to the Central Government or to a State Government.	Section 7(1) prescribes penalties for violation of section 3 : punishment for most of these offences is : upto 3 years' imprisonment and also liable for fine. But, the court can, for reasons to be recorded, award only fine if that can meet the ends of justice.

1	2	3	4
The Essential Commodities Act, 1955 (10 of 1955)—(*contd.*)		Section 3(1)— "If the Central Government is of the opinion that it is necessary to do so for controlling the rise in prices, or preventing the hoarding of any foodstuff in any locality it may, by notification, direct that notwithstanding anyting contained in sub-section 3, the price at which a food stuff shall be sold in that locality in compliance with an order made with reference to clause (f) of sub-section 2, shall be regulated in accordance with the provision of the sub-section.	
2. The Industries (Development and Regulation Act,) 1951 (65 of 1951).	15	Section 15 empowers the Central Government to conduct an investigation into the affairs of a scheduled industry under certain specified contigencies.	Section 24 prescribes penalties for violation of such directions: imprisonment extending upto six months or with fine extending to Rs. 5,000 or with both. An additional fine may be levied for continuing contravention.
	16(1)	Section 16(1) provides that if by virtue of such investigation, the Central Government is satisfied that some action is desirable, it may issue directions to the said industries which may include "controlling the prices, or regulating the distribution of any article	

or class of articles which have been the subject-matter of the investigation".

A Sectoin 18-A provides that where such a direction is not complied with or where it is considered to be detrimental to the scheduled industry or to the public interest, the management of the industry may be taken under the control of the Government.

18-G (1) The Central Government, if it considers necessary or expendient for securing the equitable distribution and availability at fair prices of any article or class of articles, may provide for regulating the supply and distribution thereof and commerce therein.

(2) In particular, the Central Government may order for controlling the prices at which any such article or class thereof may be bought or sold ; for regulating by licences, permits or otherwise the distribution, transport, disposal, possession of any such article; for prohibiting the withdrawal from sale of any such article or class thereof ordinarily kept for sale ; for requiring any person manufacturing, producing or holding in stock any such article to sell the whole or part of the article to such persons as may be specified in the order; for requiring exhibition of the price-list etc.

APPENDIX 5 (contd.)

1	2	3	4
3. The Tea Act, 1953 (29 of 1953)	30	Section 30 of this Act closely follows the provisions of the Industries (Development & Regulation) Act, 1951 as referred to above.	Section 41(1) prescribes similar punishment as is prescribed under section 24 of the Act 65 of 1951 referred to above with this difference that this Act does not prescribe additional penalty for continuing contravention.
4. The Cotton Cloth Act, 1918 (23 of 1918).		The object of the Act is to encourage and maintain the supply of cloth to poorer classes at reasonable rates.	
	4(2)	Section 4(2) empowers the Collector to issue orders *inter alia* requiring any person, who ordinarily manufactures cotton cloth, to manufacture standard cloth in such quantity and of such quality as the Collector may direct and fixing the prices to be paid to the manufacturer for standard cloth.	Section 8 prescribes punishment for contravention of section 4 with imprisonment upto six months or with fine or with both.
	9(1)	Section 9(1) empowers the State Government to "fix the price at which alone a standard cloth or any class of standard cloth shall be sold to the public".	Section 10(2) punishes those contravening sub-section 10(1) with imprisonment which may extend to six months or with fine or with both.
	1 (1)	No person shall sell or keep or offer or expose for sale to the public, standard cloth	

		otherwise than at which price as may be fixed by the State Government.....	
5. The Coffee Act, 1942 (7 of 1942).	16	The Central Government may fix the prices at which coffee be sold wholesale or retail in the Indian market. No one can sell coffee at a price higher than the one fixed under this section.	Section 36(1) prescribes penalties for violation *inter alia* of sections 16-17. The punishment may ext end upto a fine of Rs. 1,000.
	25	Section 25 provides that any excess coffee produced, shall be delivered to the Board for inclusion in the surplus pool.	Section 38A prescribes punsishment for violation of section 25(1) : fine upto Rs. 1,000, and the excess produce may also be confiscated.
6. The Preventive Detention Act, 1950 (4 of 1950).	3(1)(a)(iii)	The Central Government or State Government may, with a view to prevent a person from acting prejudicially to "the maintanance of supplies, and services essential to the community", direct that such a person shall be detained. Section 3(2) enumerates some other competent authorities to exercise similar powers.	
7. The Rubber Act, 1947 (24 of 1947).	13	Section 13 empowers the Government to fix the maximum or minimum prices or the maximum and minimum prices to be charged in the course of a business of any class of rubber specified in the order.	Section 13(3) states that any person who buys or sells rubber at a price which is more than the maximum price or less than the minimum price, shall be punishable with imprisonment for a term which may extend to one year or with fine or with both.

1	2	3	4
8. The Drugs (Control) Act, 1950 (26 of 1950).	4	Section 4 empowers the Chief Commissioner to fix, in respect of any drug, the maximum price or rate to be charged by a dealer or a producer; the maximum quantity which may, at any time, be possessed by a dealer or a producer.	Section 13(1) prescribes that if any one violates the provision of the Act, shall be punishable with imprisonment for a term which may extend to 3 years, or with fine, or with both.
	5	Section 5 prohibits sale of such drugs at a price higher than the fixed rate or to hold more than the quantity of the drugs exceeding the maximum quantity fixed by the Chief Commissioner under section 4.	Section 13(2) further empowers the competent Court to order the forfeiture.
	7	Section 7 requires that excess stocks should be reported to the Chief Commissioner.	
	8	Section 8 prohibits the refusal to sell within the quantity prescribed.	
9. The Sugarcane Act, 1934 (15 of 1934).	3	Section 3 empowers the State Government to declare any area to be controlled area, fix a minimum or maximum price of sugarcane etc.	Section 5 states that whoever purchases sugarcane at a lesser price than the one prescribed, shall be punished with fine which may extend to Rs. 2,000.

10. The Defence of India Act, 1962 (51 of 1962).	Section 3(2)(37) empowers the Central Government to frame rules for "the prevention of hoarding, profiteering, black-marketing, adulteration or any other unfair practices in relation to any goods procured by or supplied to the Government or notified by or under the rules as essential to the life of the community". Rules 125(2)(a)(b)(bb)(bc)(c) of the Defence of India Rules, 1962 may be seen.

APPENDIX 6

EXISTING STATUTORY PROVISIONS RELATING TO ADULTERATION OF FOOD AND DRUGS

1. Indian Penal Code
(45 of 1860)

Section	Marginal note	Relevant text
272	Adulteration of food or drink intended for sale.	Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
273	Sale of noxious food or drink.	Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to 6 months or with fine which may extend to one thousand rupees, or with both.
274	Adulteration of drugs.	Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such durg or medical preparation, or to make it noxious, intending that it shall be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section	Marginal note	Relevant text
275	Sale of adulterated drugs.	Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
276	Sale of drug as a different drug or preparation.	Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation, as a different drug or medical preparation shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.
284	Negligent conduct with respect to poisonous substance.	Whoever, does with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, or knowingly or negligently omits to take such care with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

APPENDIX 6 (contd.)

2. *Prevention of Food Adulteration Act*, 1954
(37 of 1954)

Section	Marginal note	Relevant text
16	Penalties	(1) If any person—
		(*a*) Whether by himself or by any person on his behalf *imports* into India or manufactures for sale, or *stores*, *sells* or *distributes* any article of food in contravention of any of the provisions of this Act or of any rule made there under, or
		(*b*) xxx xxx
		(*c*) xxx xxx
		(*d*) being a manufacturer of an article of food, has in his possession, or in any of the premises occupied by him, any material which may be employed for the purpose of adulteration, or
		(*e*) being a person in whose safe custody any article of food has been kept under sub-section (*4*) of section 10, tampers or in any other manner interferes with such article, or
		(*f*) xxx xxx
		(*g*) xxx xxx
		he shall, in addition to the penalty to which he may be liable under the provisions of section 6, be punishable—
		(*i*) for the first offence, with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both.
		(*ii*) for a second offence, with imprisonment for a term which may extend to two years and with fine :

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
16 (*contd.*)	Penalties (*contd.*)	Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the *court*, such imprisonment shall not be less than one year and such fine shall not be less than two thousand rupees, (*iii*) for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the court, such imprisonment shall not be less than two years and such fine shall not be less than three thousand rupeess. (2) If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct. The expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.
17	Offences by companies.	(1) Wherever an offence under this Act has been committed by a company every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
17 (*contd.*)	Offences by companies (*contd.*)	as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in sub-section (*1*) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be liable to be proceeded against and punished accordingly. *Explanation*—For the purposes of this section— (*a*) "Company" means any body corporate, and includes a firm or other association of individuals ; and (*b*) "director" in relation to a firm means a partner in the firm.
18	Forfeiture of property.	Where any person has been convicted under this Act for the contravention of any of the provisions of this Act or of any rule thereunder, the article of food in respect of which the contravention has been committed may be forfeited to the Government.

APPENDIX 6 (contd.)

3. *Dangerous Drugs Act*, 1930
(2 of 1930)

Section	Marginal note	Relevant text
6	Control of Central Government over manufacture of manufactured drugs.	(1) No one shall manufacture any manufactured drug, other than prepared opium, save in accordance with rules made under sub-section (*2*) and with the *conditions of any licence* for that purpose which he may be required to obtain under those rules. (2) The Central Government may make rules permitting and regulating the manufacture of manufactured drugs, other than prepared opium, and such rules may prescribe *the form and conditions of licences for such manufacture*, the authorities, by which such licences may be granted and the fees that may be charged therefor, and any other matter requisite to render effective the control of the Central Government over such manufacture. (3) Nothing in this section shall apply to the manufacture of medicinal opium or of preparations containing morphine, diacetylmorphine or cocaine from materials which the maker is lawfully entitled to possess.
12	Punishment for contravention of section 6.	Whoever, in contravention of section 6, or any rule made under that section, or any condition of a licence granted thereunder, manufactures any manufactured drug, shall be punishable with imprisonment which may extend to three years, with or without fine.
16	Enhanced punishment for certain offences after previous conviction.	Whoever, having been convicted of an offence punishable under section 10, section 12, section 13, or section 14, is guilty of any offence punishable under any of those sections, shall be subject for every such subsequent offence to imprisonment which may extend to four years, with or without fine.

APPENDIX 6 (contd.)

4. *Opium Act*, 1857
(13 of 1857)

Section	Marginal note	Relevant text
14	Confiscation of adulterated opium.	When opium delivered by a cultivator either to a receiving officer, or at the sadar factory, is suspected of being adulterated with any foreign substance it shall be immediately sealed up pending examination by the Opium Examiner, and notice of such intended examination shall be given to the cultivator. If upon such examination the opium shall be found to be so adulterated the Agent on the report of the Examiner may order that it be confiscated, and the order of the Agent shall be final and not open to question in any Court.

5. *Drugs (Control) Act*, 1950
(26 of 1950)

None.

6. *Poisons Act*, 1919
(12 of 1919)

None.

7. *Drugs Act*, 1940
(23 of 1940)

12	Power of Central Government to make rules.	(1) The Central Government may, after consultation with the Board and after previous publication by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Chapter : Provided that....said rules. (2) Without prejudice to the generality of the foregoing power, such rules may— (*a*) xxx xxx xxx (*b*) prescribe the methods or test or analysis to be employed in determining whether a drug is of standard quality;

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
12 (*contd.*)	Power of Central Government to make rules (*contd.*)	(*c*) xxx xxx xxx (*d*) xxx xxx xxx (*e*) xxx xxx xxx (*f*) xxx xxx xxx (*g*) xxx xxx xxx (*h*) xxx xxx xxx (*i*) xxx xxx xxx (*j*) xxx xxx xxx (*k*) prescribe the conditions to be observed in the packing in bottles, packages or other containers, of imported drugs; (*l*) xxx xxx xxx (*m*) prescribe the maximum proportion of any poisonous substance which may be added to or contained in any imported drugs, prohibit the import of any drug in which that proportion is exceeded, and specify substances which shall be deemed to be poisonous for the purposes of this Chapter and the rules made thereunder; (*n*) xxx xxx xxx (*o*) xxx xxx xxx
13	Offences . . .	(1) Whoever contravenes any of the provisions of this Chapter or of any rule made thereunder shall, in addition to any penalty to which he may be liable under the provision of section 11, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both. (2) Whoever, having been convicted under sub-section (*1*), is again convicted under that sub-section shall, in addition to any penalty as aforesaid, be punishable with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both. (NOTE :—Section 11 relates to powers of Customs Officers under Sea Customs Act, 1878).

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
14	Confiscation . .	Where any offence punishable under section 13 has been committed, the consignment of the drugs in respect of which the offence has been committed shall be liable to confiscation.
17	Misbranded drugs .	For the purposes of this Chapter a drug shall be deemed to be misbranded— (*a*) if it is an imitation of, or substitute for, or resembles in a manner likely to deceive, another drug or bears upon it or upon its label or container the name of another drug, unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug; or (*b*) if it purports to be the product of a place or country of which it is not truly a product ; or (*c*) if it is sold, or offered or exposed for sale, under a name which belongs to another drug ; or (*d*) if it is so coloured, coated, powdered or polished that damage is concealed, or if it is made to appear of better or greater therapeutic value than it really is ; or (*e*) if it is not labelled in the prescribed manner ; or (*f*) if its label or container or anything accompanying the drug bears any statement, design or device which makes any false claim for the drug or which is false or misleading in any particular ; or (*g*) if the label or container bears the name of an individual or company purporting to be the manufacturer or producer of the drug which individual or company is fictitious or does not exist.

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
18	Prohibition of manufacture and sale of certain drugs	From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on his behalf— (*a*) manufacture for sale, or sell, or stock or exhibit for sale, or distribute— (*i*) any drug which is not of standard quality; (*ii*) any misbranded drug; (*iii*) any patent or proprietary medicine unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of ingredients contained in it in a manner readily intelligible to the members of the medical profession; (*iv*) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims to prevent, cure or mitigate any such disease or ailment, or to have any such other effect as may be prescribed; (*v*) any drug, in contravention of any of the provisions of this Chapter or any rule made thereunder; (*b*) sell, or stock, or exhibit for sale, or distribute any drug which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder; (*c*) * * * * * Provided that....the medicine.

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
27	Penalty for manufacture, sale, etc. of drugs in contravention of this Chapter.	Whoever himself or by any other person on his behalf manufactures for sale, sells, stocks or exhibits for sale or distributes any drug— (*a*) deemed to be misbranded under clause (*a*), clause (*b*), clause (*c*), clause (*d*), clause (*f*) or clause (*g*) of section 17 shall be punishable with imprisonment for a term *which shall not be less than one year*, but which may extend to three years and shall also be liable to fine: Provided that the Court may, for any special reason to be recorded in writing, impose a sentence of imprisonment of less than one year; (*b*) other than a drug referred to in clause (*a*) in contravention of any of the provisions of this Chapter or any rule made thereunder shall be punishable with imprisonment which may extend to three years, or with fine, or with both.
28	Penalties for giving false warranty or misuse of warranty.	(1) Whoever in respect of any drug sold by him gives to the purchaser a false warranty that the drug does not in any way contravene the provisions of section 18 shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both. (2) Whoever applies or permits to be applied to any drug sold, or stocked or exhibited for sale, by him, whether on the container or label or in any other manner, a warranty given in respect of any other drug, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
30	Penalty for subsequent offences.	(1) Whoever, having been convicted of an offence— (*a*) under clause (*a*) of section 27 is again convicted of an offence under that clause, shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to five years and shall also be liable to fine. Provided that the Court may, for any special reasons to be recorded in writing, impose a sentence of less than two years; (*b*) under clase (*b*) of section 27, is again convicted of an offence under that clause shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both. (2) Whoever, having been convicted of an offence under section 28 or section 29 is again convicted of an offence under the same section shall be punishable with imprisonment which may extend to two years, or with fine, or with both. (NOTE.—Section 29 deals with penalty for use of Govt. analysis report for advertising).
31	Confiscation	(1) Where any person has been convicted under this Chapter for contravening any such provision of this Chapter or any rule made thereunder as may be specified by rule made in this behalf, the stock of the drug in respect of which the contravention has been made shall be liable to confiscation. (2) Without prejudice to the provisions contained in sub-section (*1*), any drug in respect of which the Court is satisfied, on the application of an Inspector or otherwise and after such inquiry as may be necessary, that the drug is not of standard quality or is a misbranded drug, shall be liable to confiscation.

APPENDIX 6 (contd.)

Section	Marginal note	Relevant text
32	Cognizance of offences	(1) No prosecution under this Chapter shall be instituted except by an Inspector. (2) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first class shall try an offence punishable under this Chapter. (3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Chapter.
34	Offences by companies	Same as section 17 of Food Adulteration Act, 1964.
35	Publication of sentence passed under this Act.	(1) If any person is convicted of an offence under this Act, it shall be lawful for the Court before which the conviction takes place to cause the offender's name, place of residence, the offence of which he has been convicted and the penalty which has been inflicted upon him, to be published at the expense of such person in such newspapers or in such other manner as the Court may direct. (2) The expenses of such publication shall be deemed to form part of the costs relating to the conviction and shall be recoverable in the same manner as those costs are recoverable.

APPENDIX

EXISTING STATUTORY PROVISIONS AS TO THEFT AND MISAPPROPRIATION OF PUBLIC PROPERTY AND FUNDS

The Prevention of Corruption Act, 1947

Name of the Act	Section number	Gist of the section	Penalty
(1)	(2)	(3)	(4)
1. The Prevention of Corruption Act, 1947 (2 of 1947).	5	Section 5(1)(c) provides that a public servant will be considered to have committed the offence or criminal misconduct if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control or allowing any other person so to do.	Section 5(2) punishes such a person with imprisonment for a term not less than one year but it may extend to seven years and shall also be liable to fine. A discretion is, however, given to the court to award a sentence less than one year for any special reason to be recorded in writing. According to section 5(2)A, the amount involved in such a misappropriation, will have to be taken into consideration in fixing the fine.

(1)	(2)	(3)	(4)
The Prevention of Corruption Act, 1947 (*contd.*)	5(3)	Section 5(3) introduces a presumption that where an accused or any person on his behalf is in possession of pecuniary resources or property disproportionate to his known source of income, he will be deemed to be guilty of misconduct unless he has satisfactorily explained.	
2. The Criminal Law (Amendment) Act, 1962.	61	Section 61 empowers the State Government to appoint special judges to try corruption and misappropriation cases under sections 161—165 and 165A, Indian Penal Code and section 5(2) of the Prevention of Corruption Act, 1947.	
3. The Indian Post Office Act, 1898 (6 of 1898).	52	Section 52 states that any officer who commits theft or dishonestly misappropriates any postal article shall be punished with imprisonment for a term which may extend to seven years and shall also be punishable with fine. Postal article is defined in s. 2(1).	
Ditto	56	Section 56 makes it an offence for those postal employees who post or put into any postal article without paying the required charges, intending thereby to defraud the Government of the postage.	The punishment may extend to imprisonment upto two years or with fine or with both.

4. The Railway Stores (Unlawful Possession) Act, 1955 (51 of 1955).	3	Section 3 provides that if any person is found in possession of any article of railway stores, reasonably suspected of being stolen or unlawfully obtained and cannot account satisfactorily for the same, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.
5. The Navy Act, 1957 (62 of 1957).	67	Section 67 prescribes that any person subject to naval law, who breaks bulk on board any vessel taken as a prize, with intent dishonesty to misappropriate anything therein, shall be punished with imprisonment for a term which may extend to two years.
6. The Air Force Act, 1950 (45 of 1950).	36B	Section 36B states that any person, subject to this act, breaks into any house etc. in search of a plunder, shall be punished with imprisonment for a term which may extend to 14 years or such less punishment as is otherwise provided in this Act. If the offence is committed while not in active service, the maximum punishment that can be awarded is seven years.
	52	Section 52 provides that any person subject to this Act, who commits any of the following offences, that is to say— (*a*) commits theft of any property belonging to the Government or to any Military, Naval or Air Force mess; or

(1)	(2)	(3)	(4)
The Air Force Act, 1950 (45 of 1950) (*contd.*)		(*b*) dishonestly misappropriates or converts to his own use any such property; or (*c*) commits criminal breach of trust in respect of any such property; or (*d*) dishonestly receives or retains any such property in respect of which any of the offences referred to above, knowing or having reason to believe the commission of such offence.... shall be punished with imprisonment extending upto ten years or such less punishment as in this Act is mentioned.	
Ditto	67	Section 67 makes an attempt to commit any such offence punishable for a term which may extend to one half of the longest term provided for that offence or such less punishment as is mentioned in this Act. But for an attempt to become an offence, some act should be done towards the commission of the offence.	
7. The Army Act, 1950 (46 of 1950).		The Army Act contains almost similar provisions as in the Air Force Act, 1950. See section 36B, section 52 and section 66.	

8. The Assam Rifles Act, 1941 (5 of 1941).	7 "Q"	Section 7 "Q" makes it an offence if a rifle man plunders, destroys or damages any property of any kind.	The punishment may extend to one year or with fine up to Rs. 200 or with both.
9. The Central Reserve Police Force Act, 1949 (66 of 1949).	9J	Section 9J provides, *inter alia*, that every member of the force on active duty, who breaks into any house or other place for plunder or plunders, destroys or damages property of any kind, shall be punishable with transportation for life etc.	
	14	Section 14 provides that whenever any weapon, part of the weapon or ammunition is lost or stolen, the Commandant may impose a collective fine upon subordinate officers and men of such unit whom he considers to be responsible for such a loss or *theft*.	
10. The Indian Forest Act, 1927 (16 of 1927).	33(1)	Section 33(1) provides for certain offences some of which partake of the character of theft and misappropriation of public property. The punishment may extend to six months' imprisonment or fine up to Rs. 500 or with both.	
11. The Indian Reserve Force Act, 1888 (4 of 1888).	6	Section 6 states that if a person belonging to the Reserve Forces, fraudulently obtains any pay or other sum, contrary to any rule or order, shall, on conviction by Court-Martial, be punishable as the court under	

(1)	(2)	(3)	(4)
The Indian Reserve Force Act, 1888 (*contd.*)	6	the Army Act can award. But this punishment shall be short of death, transportation or imprisonment exceeding one year.	
12. Administration of Evacuee Property Act, 1950.	32	Section 32 states that any person who unlawfully converts to his own use any evacuee property, shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.	
13. The Indian Electricity Act, 1910 (9 of 1910).	39	Section 39 states that whoever dishonestly abstracts, consumes or uses any energy, shall be deemed to have committed theft within the meaning of the Indian Penal Code and the existence of artificial means for such an abstraction shall be presumed to be evidence of such an abstraction.	
	49	Section 49 extends the application of section 39 to cases where the energy is supplied to works belonging to Central or State Governments.	
14. The Indian Penal Code (45 of 1860).	389	Section 389 provides that whoever, being a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with	

imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

405 Section 405 provides that whoever, entrusted with property, dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of the property in violation of any direction of the law etc., he will be deemed to have committed criminal breach of trust. One of the illustrations given under this section is: "A, a revenue officer, is entrusted with public money and he is directed by law, or bound by a contract, expressed or implied, with a Government to pay into certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust."

Section 406 prescribes punishment for criminal breach of trust: imprisonment of either description for a term which may extend to 3 years, or with fine, or with both.

407 Section 407 provides that whoever, being entrusted with a property as a carrier, wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

408 Section 408 states that whoever, being a clerk or servant, entrusted in such capacity with property commits criminal breach of

(1)	(2)	(3)	(4)
The Indian Penal Code (45 of 1860) (*contd.*)		trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.	
	409	Section 409 provides that whoever, being in any manner entrusted with property in his capacity of a public servant etc., commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, shall also be liable to fine.	
15. The Indian Telegraph Act, 1885 (13 of 1885).	25	If any person intending, *inter alia*, to commit mischief, damages, removes, tampers with or touches any battery, machinery telegraph lines etc., it is an offence.	Punishment may extend to imprisonment upto three years, or with fine, or with both.
	25A	Section 25A makes provision for punishment and fine against those who wilfully or negligently damage any telegraph material.	
	27	Section 27 punishes telegraph officers who, with an intention to defraud Government, send messages without paying the required charges.	The punishment may extend to imprisonment upto three years, or with fine, or with both.

	33	Section 33 makes provision for appointment of additional police force in those areas where wrongful damage to telegraph property is repeatedly and maliciously committed. The expenses involved in the employment of such police force are to be borne by the inhabitants of such place.	
16. The Telegraph Wires (Unlawful Possession) Act, 1950 (74 of 1950).	5	Section 5 provides that whosoever is in possession of any quantity of telegraph wires shall be punishable, unless he proves that they are in possession lawfully.	The punishment may extend to imprisonment upto 5 years, or with fine, or with both[1].

[1] The offence is regarded as graver than theft. See *Banchhanidhi* v. *State* A.I.R. 1959 Orissa 177, 179, para 10.

APPENDIX 8

EXISTING STATUTORY PROVISIONS RELATING TO TRAFFICKING IN LICENCES, PERMITS, ETC.

There are no direct provisions on the subject of trafficking in licenses. The provisions of the following enactments, however, may be noted.

Industries etc. Act, 1951

Sections 11, 11 (*a*), 12 (*i*), 13, 18 (*G*) (1)(*b*), read with section 24 which is the general penalty section, and section 24A, which is the penal section cr *false statements.* See also section 30 (1), (*i*), (*j*), (*k*), (*l*), (*m*) and (*n*).

The Imports and Exports (Control) Act (18 *of* 1947) *section* 3(1) read with section 5 which is the penalty section.	Contravention, etc., of an order made under the Act or any condition of a licence granted under any such order is an offence punishable with an imprisonment upto one year or with fine or with both. The previous decisions as to whether a breach of condition of a licence would amount to an offence[1-2] are now obsolete after the amendment Act (4 of 1960). The goods can also be confiscated under section 3(2) read with the Customs Act. See A.I.R. 1957 S.C. 648 on this point.

The Foreign Exchange Regulation Act (7 *of* 1947) section 4 (1), section 8(1), sections 21 and 22 (contracts in *evasion* of the Act, and false statement). Penalty is dealt with by section 23 for various situations, and also by section 23A.

NOTE :—Sometimes such offences may fall under sections 420, 467, 457 I.P.C. also, if permit books have been tampered with[3].

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[1]A.I.R. 1957 Cal. 83.

[2]A.I.R. 1957 Cal. 606.

[3]*Cf. State of A. P.* v. *Subbaiah* A. I. R. 1961

APPENDIX 9

PROVISIONS OF THE DEFENCE OF INDIA RULES—1962 RELEVANT OR ANALOGOUS TO THE OFFENCES IN QUESTION

Rule 1	Gist 2
35 (6) (h), (i) (j), (k), (l), (m), (n), (o) and (s).	Certain "prejudicial acts".
36	Sabotage.
37	Receiving of sabotage property.
41	Prohibition of prejudicial acts, publications and communications (punishment is imprisonment) upto five years or fine, or both.
125	General control of industry. Under sub-rule (9), penalty for contravention of an order under thi imprson ment upto three years or fine or both- If the contravention is made by resorting to any corrupt practice or other malafide action or by inducing any person to abuse his authority, then imprisonment may extend to seven years. Forfeiture to Government of the property in respect of which an order passed under the rule is contravened, is allowed for if the order so provides.
Defence of India Rules	
126A to 126Z	Gold Control Rules.
132	Prohibition regarding coins and notes. This is to be read with s. 13, Indian Coinage Act, 1906 (3 of 1906).
133	Regulation of dealings in security. (Government securities are defined in section 2 of the Public Debt Act, 1944).

APPENDIX 10

LIST OF CENTRAL ACTS PERTAINING TO ANTI-SOCIAL OFFENCES, OTHER THAN OFFENCES LISTED BY THE SANTHANAM COMMITTEE

1. Child Marriage Restraint Act, 1929 (19 of 1929).
2. The Children (Pledging of Labour) Act, 1933 (2 of 1933), and other Acts regarding labour.
3. The Drugs and Magic Remedies (Objectionable Advertisemens) Act, 1954 (21 of 1954).
4. The Untouchability (Offences) Act, 1955 (22 of 1955).
5. The Spiritous Preparations (Inter-State Trade and Commerce) Control Act, 1955 (39 of 1955).
6. The Prize Competitions Act[1], 1955 (42 of 1955).
7. The Young Persons (Harmful Publications) Act, 1956 (93 of 1956).
8. The Orphanages and other Charitable Homes (Supervisions and Control) Act, 1960 (10 of 1960).
9. The Dowry Prohibition Act, 1961 (28 of 1961).

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[1] See *State* v. *Bennet Coleman & Co.* A.I.R. 1954 Bom. 213.

APPENDIX II

PROVISIONS OF THE INCOME-TAX ACT, 1961 (43 OF 1961) REFERRED TO IN REPORT OF THE COMMITTEE ON PREVENTION OF CORRUPTION—PAGE 271 (MIDDLE) AS OFFERING SCOPE FOR EVASION

Section Number (1)	Gist of the Section (2)
10(3)	Excludes from total income receipts of casual and non-recurring nature (unless they are capital gains or receipts arising from business or exercise of a profession or receipts by way of addition to the remuneration of an employee).
10(4)	Excludes from total income in the case of non-residents income from interest etc. on bonds issued by the Central Government under a loan agreement with the international bank etc. or bonds similarly issued by a Financial Corporation etc.
11	Excludes from total income (subject to the provisions of sections 60 to 63) income from property held for charitable or religious purposes.
13	Excludes the application of section 11 in certain cases (roughly speaking in respect of property held for a private religious purpose, where the trust does not ensure for the benefit of the public, and trust or charitable institution created for the benefit of any particular religious community or caste or for the author of trust or his relative).
37	Allows expenditure (subject to certain exceptions) laid out or expended wholly and exclusively for the purposes of the business or profession.

APPENDIX II (contd.)

(1)	(2)
52	Deals with acquisition of capital asset from an assessee, where the person acquiring is directly or indirectly connected with the object of *avoidance* or *reduction* of the liability of the assessee under section 45. Section 45 provides for charge of income-tax or capital gains.
60	Provides that all income—arising by virtue of a transfer whether revocable or not, shall be chargeable to income-tax as the transferor's income where there is no transfer of the assets (as to the meaning of "transfer", see section 63).
64	Provides that in computing the total income of any individual, there shall be included all such income as arises directly or indirectly to the spouse or minor child of such individual through membership of a firm or from assets transfered to the spouse or minor child.
67	Deals with method of computing a partner's share in the income of the firm.
68	Deals with cash credits.
69	Deals with unexplained investments.
73	Deals with losses in speculation business.
74	Deals with losses under capital gains.
92, 93, 94	Contain special provisions relating to avoidance of tax, mainly in relation to non-residents and in relation to sale or purchase back of securities, and other transactions involving securities.
104	Deals with super tax on undistributed income.

APPENDIX 12

SUMMARY OF CERTAIN POINTS AS TO TAX EVASION ETC., DISCUSSED IN THE REPORT OF INCOME-TAX INVESTIGATION COMMISSION, 1949 PRESIDED OVER BY SHRI VARDACHARIAR

The Income-tax Investigation Commission, constituted under the Taxation on Income (Investigation Commission) Act (30 of 1947); was required to investigate and report on all matters relating to taxation on income, with particular reference to the extent to which the existing law etc., was adequate to prevent the evasion thereof. Questions 33 to 37 of the Questionnaire issued by the Commission (pages 269 and 270 of the Report) specifically dealt with certain matters concerning evasion. In its Report the Commission dealt with evasion and avoidance at various places. The important points are summarised below:

Page of the Report	Gist
7	Distinction between avoidance and "evasion"
79 to 83 (paragraphs 181 to 183)	Avoidance and evasion.
See also page 21, paras. 47, 86, and 193.	Under-statement of income on returns described as one of the principal ways of practising fraudulent evasion.
Pages 103 to 105, paras. 231 to 236	Income-tax offences.

APPENDIX 13

POINTS AS TO EVASION AND AVOIDANCE DISCUSSED IN THE REPORT OF THE TAXATION ENQUIRY COMMISSION (1953-54)

(1)	(2)
Report, Vol. II, pages 189 and 190, paras. 1 to 6 (contain a general discussion on the subject), as to income tax.	Evasion *i.e.* deliberate distortion of facts after the liability is incurred and avoidance *i.e.* so arranging one's affairs before the liability is incurred so as to prevent its occurrence or to reduce the incidence of the tax have been discussed. Avoidance, though legal, was regarded as anti-social. It was suggested, that the Department should keep a vigilant eye on inroads into revenue by avoidance, so that prompt remedial action by ***legislation*** is taken by Government. As regards evasion, it was stated that it could be tackled effectively only by improving and strengthening the enforcement machinery, the existing arrangements were reviewed under the following heads :— (*i*) administrative measures adopted for tracing 'new' assessees (*i.e.* those who have taxable incomes but fail to send in returns), and for verifying the accuracy of the returns submitted by existing assessees, by (*a*) external survey; (*b*) exchange of information collected from the records of existing assessees available in the Income-tax Department; (*c*) Collection and collation of information obtaining from outside sources (including informers);

APPENDIX 13 (contd.)

(1)	(2)
Report, Vol. II, pages 189 and 190, paras. 1 to 6—(*contd.*)	(*ii*) Special arrangements for dealing with cases of substantial evasion; (*iii*) legal provisions for enforcing 'back duty', *i.e.*, section 34 of the Income-tax Act, etc.; (*iv*) public censure as a remedy for evasion; (*v*) proper representation in income-tax proceedings; (*vi*) strict enforcement of collections; and (*vii*) voluntary disclosure of concealments.
Report, Vol. II, page 202, paras. 36 and 37 (Income-tax.)	Recommendations were made to increase the maximum limit of penalty to three times the amount of tax evaded and to provide that abetment or instigation to evasion should be made an offence punishable as the main offence. It was also observed, that prosecutions under sections 51 and 52 of the Income-tax Act, 1922 were seldom resorted to in actual practice.
Report, Vol. II, page 320, para. 11 (Customs duties).	Certain recommendations were made as to the law relating to smuggling.
Report, Vol. II, pages 353—361, paras. 142 to 197.	Summarises the various recommendations relating to evasion and avoidance. Most of these concern administrative matters or topics.
Report, Vol. III, pages 72, 73, 74, paras. 19, 20, 21 (Sales Tax).	Discusses the reasons for evasion and avoidance of sales-tax. (See also pages 49 and 65, para. 5). At page 72, para. 19, the practice of showing the sales-tax separately in the cash memo is also discussed as a source of evasion. At page 74, the following categories of methods of evasion are listed:— (1) Manipulation of accounts; omission of some of the taxable sales from books and records; suppression of other transactions

APPENDIX 13 (concld.)

(1)	(2)
Report, Vol. III, pages 72, 73, 74, paras. 19, 20, 21 (sales Tax) (*contd.*)	(e.g. purchases) in the light of which the sales can be verified; under-estimation of production, imports and sales by manufacturers and importers; falsified, entries in declaration forms and certificates; showing separately sales of bullion and sales of services even when ready-made gold and silver ornaments are sold; and
	(2) Carrying on business without registration; splitting up of business so that the turnover may be below the taxable limit; changing place of business, name of firm, etc., when assessment becomes due, or disappearing altogether from the jurisdiction of the particular State.
Report, Vol. III, page 99, para. 12 (Stamp duties).	Observes that since stamp duty is levied on the instrument, it is theoretically possible that the party may refrain from executing the instrument, but the scope of such evasion is very limited, as an instrument would later be required as legal proof. But *undervaluing* the transaction is a common method of evasion. Another common method was to show a type of instrument which was not in conformity with actual facts (*e.g.* pro-note instead of a bond). Practice of blank transfers was mentioned as an example of "avoidance".

APPENDIX 14

SUMMARY OF THE POINTS MADE IN "INDIAN TAX REFORM" BY MR. KALDOR, DEPARTMENT OF ECONOMIC AFFAIRS, MINISTRY OF FINANCE, GOVERNMENT OF INDIA (1956)

One of the problems dealt with in the Report of Mr. Kaldor was the problem of tax evasion. The matter was dealt with at pages 103 to 115 of his Report. The possible remedies, considered by him are summarised below:—

(*i*) his proposals or resubmission of a single personal tax, with a number of different taxes which were bound to reduce the "incentive to evade".

(Page 106, para. 189 of the Report).

(*ii*) Proposal for the submission of a comprehensive return concerning the personal income of each tax-payer and the introduction of a reporting system on all capital transactions by means of tax vouchers.

(Page 109, para. 194 of the Report).

(*iii*) Compulsory auditing of accounts of tax-payers whose income exceeds a certain minimum.

(Page 107, para. 197 of the Report).

(*iv*) Status and obligations of auditors.

(Page 111, para. 198 of the Report).

Mr. Kaldor's Report

(*v*) Scrutiny of accounts by the Department.

(Page 112, para. 201 of the Report).

(*vi*) Prevention through deterrents.

(Page 113, para. 202 of the Report).

(*vii*) Improvement of standards of administration in the Department.

(Page 114, para. 205 of the Report).

(*viii*) Gold hoarding and taxation.

(Pages 115 to 120, paragraphs 206 to 218 of the Report).

APPENDIX 15

TAX EVASION—PROSECUTIONS IN INDIA FOR—EXTRACTS FROM REPORT OF THE DIRECT TAXES ADMINISTRATION ENQUIRY COMMITTEE (1958-59).

(Pages 150 and 169-170, para. 7.12 and 7.63, 7.64).

"7.12. One important reason for the prevalence of evasion is stated to be that in actual practice no *deterrent* punishment like imprisonment *is being meted* out to tax *evaders*

Absence of deterrent punishment.

when they are caught. Though the direct taxes Acts provide for prosecution and imprisonment in cases of concealment and false statements in declarations, the Department has not, during the last 10 years, got even a single person convicted for evasion. It is seen that prior to 1939, prosecutions were being freely resorted to in suitable cases. We feel that unless it is brought home to the potential tax evader, that attempts at concealment will not only not pay but also actually land him in jail, there could be no effective check against evasion. At present, a tax evader even if caught, has only to pay the tax sought to be evaded and a percentage thereof as penalty. Though the maximum penalty leviable is 150 percent of the tax sought to be evaded such a high penalty is rarely levied. Even the moderate penalties levied by the assessing officers are reduced to nominal sums by appellate authorities. Both these factors, the non-resort to prosecution and the non-levy of deterrent penalties have, no doubt, encouraged the growth of evasion.

"7.63. We have suggested in para. 7.60 that in the matter of levying penalties, a distinction should be made between the different kinds of defaults and offences, and that the penalties leviable should be specified in a detailed schedule. In our opinion, a similar distinction should be made in the matter of requiring the prior approval of the Inspecting Assistant Commissioner for levying penalties, and such approval should be obligatory only in cases of more serious offences, where the quanta of penalties leviable are heavier. Further, the Inspecting Assistant Commissioner should be statutorily required to give a hearing to the assessees before according his approval to the levy of penalty in such cases. In order to avoid unduly long delays in the finalisation of penalty proceedings, we also recommend that the law should be amended so as to require such proceedings to be completed within one year of the passing of the relevant assessment order or of the appellate order of the Appellate Assistant Commissioner or the Appellate Tribunal or of the revision order of the Commissioner, as the case may be.

Prosecutions.

"7.64. Section 51 of the Income-tax Act and the corresponding sections of the other direct taxes Acts provide for the prosecution of a person who fails, without reasonable cause or excuse, to deduct taxes at source and pay them to the Government or to furnish such certificates, returns or statements, or to allow inspections as required under the Acts. He is punishable, on conviction before a magistrate, with fine which may extend to Rs. 10 for every day of default. Under Section 52 of the Income-tax Act, if a person makes a false statement in the verification contained in the return of income, the return of dividends, application for registration, appeals, etc., he is punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months or with fine which may extend to

Rs. 1,000 or both. The period of imprisonment prescribed in the other direct taxes Acts for such offences, is, however, one year."

APPENDIX 16

EXTRACTS FROM THE CRIMINAL CODE OF THE HUNGARIAN PEOPLE'S REPUBLIC, 1962

Section 124

Sabotage.

(*1*) Whoever causes considerable prejudice by his activity in the province of his office, service or public charge in order to undermine or weaken the state, *social or economic order of the Hungarian People's Republic* or does so by omission in his duty or by not doing it properly, shall be punished with loss of liberty ranging from five to twelve years.

(*2*) Punishment shall be loss of liberty ranging from ten years to fifteen years, or death, if—

(*a*) the crime has caused particularly grave prejudice;

(*b*) the crime has been committed in times of war.

(*3*) Whoever carries out a preparatory act for *sabotage,* shall be punished with loss of liberty ranging from six months to five years and in times of war with loss of liberty ranging from two years to eight years.

Section 125

Destruction.

(*1*) Whoever destroys, renders useless or damages a public facility, plant, production unit, general traffic, telecommunication plant or equipment, public building or structure, stock of products or produce, war material or other property of similar importance by its purpose, and does so with the aim of weakening the state, social or economic order of the Hungarian People's Republic, shall be punished with loss of liberty ranging from five years to twelve years.

ections
and 431
in Penal
;,
on 126
way Act.

(*2*) Punishment shall be loss of liberty ranging from ten years to fifteen years or death, if—

(*a*) the crime has caused particularly grave prejudice;

(*b*) the crime has been committed in a manner causing public danger or

(*c*) in times of war.

(*3*) Whoever carries out a preparatory act for destruction, shall be punished with loss of liberty ranging from six months to five years and in times of war with loss of liberty ranging from two years to eight years.

APPENDIX 16 (contd.)

Section 144

Abuse of Official Power.

An official person who infringes his official duty, exceeds his power or abuse his official position in any way in order to cause unlawful prejudice or to procure an unlawful advantage for himself or for another, shall be punished with loss of liberty not exceeding three years.

Cf. Se 5 (1) (d) Preventi Corrupt Act, 19 and Sec 166, In Penal C

Section 153

Trading in influence.

(*1*) Whoever demands, asks or accepts for himself or for another an advantage for using his real or pretended influence with an official person shall be punished with loss of liberty not exceeding three years.

(*2*) Punishment shall be loss of liberty ranging from six months to five years if the person tradi in such influence—

(*a*) has alleged or pretended that he will bribe an official person or accord an advantage to him;

Cf. Sec 163-164 Indian Penal C

(*b*) when committing the act or using his influence has pretended to be an official person.

(*3*) Punishment shall be loss of liberty ranging from two years to eight years if the crime has been committed professionally.

Section 196

Crime committed with harmful articles of general consumption.

(*1*) Whoever makes or stores with the aim of putting into circulation an article for general consumption *injurious to health*, shall be punished with loss of liberty not exceeding one year.

Cf. Sect 16(1) (a) Preventi of Food etc. Act 1954.

(*2*) Whoever puts into circulation the article defined in para. (*1*) shall be punished with loss of liberty not exceeding three years.

(*3*) Whoever commits by negligence the crime defined in para. (*2*) shall be punished with loss of liberty or correctional-educational work not exceeding one year.

Section 198

Traffic in drugs.

(*1*) Whoever makes, procures, keeps or puts into circulation a drug suitable for pathological enjoyment by infringing or evading the prescription of the authorities, shall be punished with loss of liberty not exceeding one year.

(*2*) Punishment shall be loss of liberty not exceeding three years, if the crime was committed—

(*a*) professionally,

(*b*) by a recidivist, or

(*c*) in criminal partnership.

APPENDIX 16 (contd.)

Section 224

Infringement of duties in connection with the economy.

(*1*) Whoever infringes his duty based on law or on a disposition issued on the strength of law, which duty relates to the production, utilization, circulation, declaration, putting at disposal, keeping on stock, or handling of products or produce and by doing so causes considerable economic prejudice, shall be punished with loss of liberty not exceeding three years.

(*2*) Punishment shall be loss of liberty ranging from six months to five years if the crime—

(*a*) was committed by a recidivist,

(*b*) in respect of a considerable quantity of products or produce or of products and produce of considerable value.

(*3*) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the crime.

(*4*) Whoever committed the crime *by negligence* shall be punished with a fine and if the interests of the people's economy were gravely prejudiced with loss of liberty or correctional-educational work not exceeding one year.

Section 225

Wasteful Husbandry.

(*1*) A worker, authorized to take dispositions independently, of a state organ, social organization or co-operative, who gravely or systematically infringes the requirements of rational economy, displays an economic activity involving considerable waste of money, material, power or labour, shall be punished with loss of liberty not exceeding three years.

(*2*) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the crime.

(*3*) Whoever commits the crime by negligence, shall be punished with loss of liberty or correctional-educational work not exceeding one year and, if the interests of the people's economy were gravely prejudiced, with loss of liberty not exceeding three years.

Section 226

Misleading the organs of the people's economy.

(*1*) Whoever misleads the competent organ of the people's economy by supplying untrue data, concealing data, or in any other manner, in order to obtain the granting of an investment or credit or the approval of the economic plan, or to influence the distribution of fixed and circulating funds, the fixing of a price or to obtain permission of the foreign exchange authority, shall be punished with loss of liberty not exceeding three years.

APPENDIX 16 (contd.)

(2) Punishment shall be loss of liberty ranging from six months to five years if considerable economic prejudice was caused by the crime.

(3) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the crime.

Section 227

Obstructing economic control and collection of economic data.

(1) Whoever misleads the organ entitled to carry out economic control or to collect economic data by supplying untrue data on the management, by concealing data or in any other way, or refuses to comply with the obligatory supply of data or of reports, systematically fails to keep the prescribed accounts and registers or presents in them the prescribed data systematically falsified, or attempts in any other way to frustrate control, shall be punished with loss of liberty or correctional-educational work not exceeding one year.

(2) The same punishment shall be inflicted on a person, who takes a hostile measure against a worker for having supplied correct data to the organ mentioned in para. (1).

Section 228

Misuse of inventions.

(1) Whoever sends abroad or publishes in Hungary without the permission prescribed by law an invention, or other exploitable technical idea, shall be punished with loss of liberty not exceeding three years, if no graver crime was committed.

(2) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the crime.

Section 229

Crime infringing discipline in investments and finance.

(1) Loss of liberty not exceeding one year shall be inflicted on

a person who infringes or evades a duty or prohibition defined in the statutory provisions on the credit system, money circulation and on investment and renewals by—

(a) granting directly or indirectly an unauthorized credit or making use of such credit,

(b) using for another purpose a credit granted for a definite purpose or the funds granted for a definite investment or renewal,

(c) realizing an investment without permission, an investment or renewal with funds from a not permitted source or a renewal with funds to be used for another purpose,

APPENDIX 16 (contd.)

(*d*) diverting totally or partly the cover of the credit, preventing enforcement of the securities of the credit (lien, mortgage, statutory priority to satisfaction, assignment, suretyship, etc.) or frustrating in another way satisfaction of the creditor from the cover,

(*e*) arranging that wages be paid not to the debit of the wage fund, or that some other payment than wages be made to the debit of the wage fund.

(*2*) Punishment shall be loss of liberty not exceeding three years, if interests involved in the order of investments and money economy were gravely prejudiced by the crime.

Section 230

Putting into circulation an industrial product of bad quality.

(*1*) A worker in a managerial position or responsible for quality control of an industrial or commercial enterprise or co-operative, who acts in such a manner that an industrial product of bad quality be put into circulation as a good quality product or does not prevent the putting into circulation of such product in this manner, though obliged so to do by his sphere of activity, shall be punished with loss of liberty not exceeding one year, if no graver crime was committed.

(*2*) Punishment shall be loss of liberty not exceeding three years, if the crime was committed in respect of a considerable quantity of industrial products or industrial products of considerable value.

(*3*) Punishment shall be loss of liberty ranging from six months to five years, if the interests of people's economy were gravely prejudiced by the crime.

(*4*) Whoever commits such a crime by negligence, shall be punished in the case defined in para. (*2*) with loss of liberty or correctional-educational work not exceeding one year and in the case defined in para. (*3*) with loss of liberty not exceeding three years.

Section 231

Putting into circulation an industrial product of bad quality.

(*1*) Whoever infringes the rules relating to the fixing of the quality of industrial products, shall be punished with loss of liberty or correctional-educational work not exceeding one year, if, as a consequence, a considerable quantity of industrial products or industrial products of considerable value had been put into circulation included in a higher quality category than laid down by a standard of the Hungarian People's Republic or by another binding prescription.

(*2*) Punishment shall be loss of liberty not exceeding three years, if the interests of the people's economy were gravely prejudiced by the crime.

APPENDIX 16 (contd.)

Section 232

Putting into circulation an industrial product of bad quality.

(*1*) An industrial product, for which quality requirements are fixed by a standard of the Hungarian People's Republic, shall be deemed to be of bad quality, if it does not comply even with the lowest quality requirements defined in the standard.

(*2*) If the quality of an industrial product is not fixed by a standard of the Hungarian People's Republic, it shall be deemed to be of bad quality if it does not even comply with the lowest quality requirements defined in the technical specification approved by the superior organ or organ otherwise competent for such approval.

(*3*) If in foreign trade the quality of the industrial product is fixed not on the basis of the standard of the Hungarian People's Republic, such product shall be deemed to be of bad quality if it does not comply with the contractual stipulations, provided that it is for this reason completely unsuitable for performing the conditions of the contract or made suitable only by causing considerable economic prejudice.

(*4*) In addition to the cases referred to in the above paragraphs such an industrial product shall be deemed to be of bad quality, which cannot be used for its proper purpose or whose usefulness is considerably reduced.

Section 233

False attestation of quality.

(*1*) Whoever attests in a quality certificate or in another document guaranteeing quality untrue data on the quality of products or produce, shall be punished with loss of liberty not exceeding three years.

(*2*) Whoever commits the crime by negligence shall be punished with loss of liberty or correctional-educational work not exceeding one year.

Section 234

Putting into circulation Products (Produce) provided with a false mark.

Whoever puts into circulation products or produce with a quality mark, standard mark or other mark, with which the product or produce does not comply or puts into circulation or causes to be put into circulation the product or produce provided not with the mark of the real producer, but with that of another, shall be punished with loss of liberty or correctional-educational work not exceeding one year, if no graver crime was committed.

Cf. S. 5, 6 and 13 Indian Standards, etc. Act, 3 of 1962.

Section 235

Bribery.

(*1*) Whoever asks, demands or accepts an advantage for infringing his duty in his sphere of activity with a state enterprise, other state economic organ or co-operative, shall be punished with loss of liberty not exceeding three years.

(2) Punishment shall be loss of liberty ranging from six months to five years if—

(a) the perpetrator is a recidivist;

(b) considerable economic prejudice was caused by the crime.

(c) the provisions of section 154 shall also be applied to bribery.

Section 236

Speculation.

(1) Whoever,—

(a) carried on commercial activity or maintains an industrial enterprise without a proper licence,

(b) carried on unjustified *intermediate trade* with goods or speculates with them in any manner leading to *profiteering*,

shall be punished with loss of liberty not exceeding three years.

(2) Punishment shall be loss of liberty ranging from six months to five years, if speculation was committed—

(a) professionally,

(b) by a recidivist,

(c) in criminal partnership,

(d) in respect of a considerable quantity of goods or of goods of considerable value,

(e) was camouflaged to give the impression that the economic activity involved by it had been carried on by a state enterprise, other state economic organ or co-operative within the scope of its regular activity.

(3) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the speculation and if in this case the crime also falls under para (2), punishment shall be loss of liberty ranging from five years to fifteen years.

(4) In the cases defined in para (2) and para (3) confiscation of property may also be applied as supplementary punishment and a recidivist may also be punished with expulsion from certain places of the country.

Section 237

Unauthorised foreign trade activity.

(1) Whoever carries on foreign trading activity without being properly authorized so to do, shall be punished with loss of liberty not exceeding three years.

(2) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of the people's economy were gravely prejudiced by the crime.

APPENDIX 16 (contd.)

(3) Whoever commits the crime by negligence shall be punished with a fine and, if the interests of the people's economy were gravely prejudiced, with loss of liberty or correctional-educational work not exceeding one year.

Section 238

Profiteering

(1) Whoever,—

(a) demands, stipulates or accepts for goods a price higher than that fixed by the authority, or

(b) in the absence of a price fixed by the authority demands, stipulates or accepts a price including profits in excess of an *equitable gain,*

shall be punished with loss of liberty not exceeding three years.

Cf. Sectic 3(1)(c) and S. 3A; s. 7(1)(a)(ii Essential Commoditi Act, 1965 (10 of 1965

(2) Punishment shall be loss of liberty ranging from six months to five years if profiteering was committed—

(a) professionaly,

(b) by a recidivst,

(c) in criminal partnership,

(d) in respect of a considerable quantity of goods or goods of considerable value.

(3) Punishment shall be loss of liberty ranging from two years to eight years, if the interests of people's economy were gravely prejudiced by the crime.

(4) In the cases falling under paragraphs (2) and (3) confiscation of property may also be inflicted as supplementary punishment and if profiteering is committed professionally by a recidivist, he may also be expelled from certain parts of the country.

(5) A person committing the crime by negligence shall be punished with a fine.

(6) The act of a person, who does not exceed the guiding price fixed by the authority, shall not be subject to para (1) clause (b).

Section 239

Defrauding the customers.

(1) Whoever defrauds the customers in retail trade by false weighing, counting or by injuring the quality of goods, shall be punished with loss of liberty not exceeding one year.

(2) Punishment shall be loss of liberty not exceeding three years, if the crime was committed—

(a) professionaly,

(b) by a recidivist or

(c) if the crime involved considerable loss to the purchaser.

APPENDIX 16 (contd.)

Section 240

Crimes relating to public supplies.

(*1*) Whoever, to the prejudice of public supplies

(*a*) destroys, makes useless, hides, conceals or utilizes the stock of products or produce at his disposal despite a prohibition by law or by violating the rules of proper economy.

(*b*) stores, in relation to his requirements, an excessive quantity of products or produce and thereby creates difficulties for others in obtaining them.

Licences.

(*c*) obtains by misleading conduct a licence for the acquisition, putting into circulation or transport of products or produce or speculates with such licence,

shall be punished with loss of liberty not exceeding three years.

(*2*) Punishment shall be loss of liberty ranging from six months to five years, if the crime was committed—

(*a*) by a recidivist,

(*b*) in respect of a considerable quantity or products or produce or products or produce of considerable value.

(*3*) In the cases falling under para (*2*) confiscation of property may also be applied as supplementary punishment.

(*4*) Whoever commits the crime by negligence shall be punished with a fine.

Section 241

Money forging.

(*1*) Whoever,—

(*a*) counterfeits or forges money in current tender for the purpose of putting it into circulation,

(*b*) acquires money counterfeited or forged by another for putting it into circulation, or

(*c*) puts into circulation false or forged money,

shall be punished with loss of liberty ranging from two years to eight years.

(*2*) Punishment shall be loss of liberty ranging from five years to twelve years, if money forging was committed

(*a*) in criminal partnership,

(*b*) in respect of a great quantity of money or money of great value.

(*3*) Punishment shall be loss of liberty ranging from six months to five years, if coins were counterfeited or if the quantity or value of the false or forged money is not considerable.

APPENDIX 16 (contd.)

(4) For money forging, confiscation of property may also be inflicted as a supplementary punishment.

Section 242

Money forging.

(1) If in the case falling under clause (c), para (1), section 241 the perpetrator had lawfully acquired the false or forged money in the belief that it was genuine, and subsequently recognized that the money was false or forged, punishment shall be loss of liberty or correctional-educational work not exceeding one year.

(2) Punishment shall be loss of liberty not exceeding three years, if the crime was committed in respect of a great quantity of money or money of great value.

Section 243

Money forging.

Whoever carries out an act of preparation for money forging, shall be punished with loss of liberty or correctional-educational work not exceeding one year.

Section 244

Money forging.

(1) For the application of section 241 such alteration of money withdrawn from circulation, that it should have the appearance of money in circulation, shall be considered counterfeiting of money in circulation,

application or removal of a mark serving to show that the money is only valid in a certain country shall be considered money forging, reduction for the precious metal content of money shall also be considered as forging.

(2) In applying sections 241 to 243 money shall mean metal or paper money and bank notes.

(3) Securities issued by the State and other bearer's securities—if in general circulation—shall be adjudged in the same way as paper money.

(4) Foreign money and securities shall be granted the same protection, as Hungarian money and securities.

Section 245

Stamp forging.

(1) Whoever counterfeits or forges stamps with the aim of putting them into circulation or for use, or acquires stamps counterfeited or forged by another person for the same purpose, shall be punished with loss of liberty not exceeding three years.

(2) The same punishment shall be inflicted on a person who puts into circulation or uses false, forged or already used stamps as genuine or unused ones.

(3) Punishment shall be loss of liberty ranging from six months to five years if stamp forging was committed—

(a) in criminal partnership,

(*b*) in respect of a great quantity of stamps or stamps of great value.

(*4*) Punishment shall be loss of liberty not exceeding one year, if the quantity or value of the stamps utilized or put into circulation is not considerable.

Section 246

(*1*) In applying section 245 the word stamps shall comprise: Stamp forging.

(*a*) stamps intended for postal or financial use, which are in circulation, withdrawn from circulation, or not yet put into circulation,

(*b*) stamps in circulation, withdrawn from circulation, or not yet put into circulation, intended for use in any field of activity of the post, postal meter cancellation impressions, special and other overprints, international reply coupons, postal receipts, further any inscription of mark applied by the post in connection with postage,

(*c*) state administration prints under strict control, both with stamp impressions and without such impressions,

(*d*) official marks or seals, serving for taxation, to prove the nature and content of metal, acceptance, quality or quantity of material, or applied by a financial authority or organ,

(*e*) stamps and seals, used by the office of weights and measures for certifying, gauging, and examination of measuring devices and for marking the volume of barrels.

(*2*) In applying section 245 putting into circulation shall also mean putting into circulation for stamp collection, and forging shall mean any unauthorized alteration of stamps for collection.

(*3*) Foreign stamps shall be granted the same protection as Hungarian stamps.

Section 247

(*1*) Whoever infringes or evades a duty or prohibition defined in statutory provisions on foreign exchange control and in statutory provisions regulating possession and circulation of precious metals and objects made from precious metals, shall be punished with loss of liberty not exceeding three years. Crimes violating foreign exchange control.

(2) Punishment shall be loss of liberty ranging from six months to five years, if the crime was committed.

(*a*) professionally,

(*b*) by a recidivist,

(*c*) in connection with considerable value.

APPENDIX 16 (contd.)

(3) Punishment shall be loss of liberty ranging from two years to eight years, if foreign exchange control interests were gravely prejudiced by the crime.

(4) In the case falling under paragraphs (2) and (3) confiscation of property and expulsion from certain parts of the country may also be applied as supplementary punishment.

(5) Whoever commits the crime by negligence in connection with considerable value shall be punished with a fine.

Section 248

Tax Fraud.

(1) Whoever,—

(a) presents untruly or conceals before the authority a fact (data) of importance in determining his liability to tax and thereby *or by any other type of conduct reduces*

Tax evasion.

(b) by deceiving the authority takes advantage of exemption from taxation or tax allowance, to which he is not entitled,

(c) in the absence of the condition fixed by law, or without official permission, diverts from inland revenue control, a product or produce reserved to inland revenue or acquires, hides or helps to alienate for pecuniary profit a product or produce diverted by another shall be punished with loss of liberty not exceeding three years.

(2) Punishment of the crime shall be loss of liberty ranging from six months to five years, if committed by a recidivist.

(3) In applying this section, it shall be deemed to include duties.

Section 249

Customs duty crimes.

(1) Whoever,—

(a) diverts dutiable goods from customs duty control or makes to the authority a false declaration relating to circumstances essential for customs of the dutiable goods (smuggling),

(b) acquires, or hides for pecuniary profit smuggled dutiable goods or co-operates with the same purpose in alienating smuggled dutiable goods (receiving smuggled goods) shall be punished with loss of liberty not exceeding three years.

(2) Punishment shall be loss of liberty ranging from six months to five years if the perpetrator is a recidivist.

APPENDIX 16 (contd.)

Section 250

(*1*) In cases of infringement of duties in connection with economy, speculation, profiteering, crimes relating to public supplies, crimes violating foreign exchange control and of tax fraud as defined in clause (*c*), para. (*1*), section 248, money or other objects with which the crime was committed and belonging to the perpetrator, shall be confiscated. Confiscation.

(*2*) Confiscation may also be applied, if the money or other object is not the property or the perpetrator, but the proprietor had previously known that the crime would be committed.

(*3*) In cases of a customs duty crime the goods in respect of which the crime was committed shall be confiscated; goods being the property of a state organ or of a co-operative cannot be confiscated.

(*4*) If the money or other object, in respect of which the crime was committed, cannot be confiscated, the perpetrator shall be obliged to pay the value of the object subject to confiscation.

(*5*) The Court may omit confiscation or the obligation on the perpetrator to pay the value subject to confiscation, if that would mean for the perpetrator an inequitable prejudice not in proportion with the nature of the crime.

Section 251

Criminal proceedings for the crimes enumerated below may only be instituted on information lodged by the organ defined in a statutory provision: infringement of duties in connection with the economy (section 224), wasteful husbandry (section 225), misleading the organs of the people's economy (section 226), obstructing economic control and collection of economic data (section 227), misuse of inventions (section 228), crimes infringing discipline in investment and finance (section 229), putting into circulation and industrial product of bad quality (sections 230 to 232) unauthorized foreign trade activity (section 237), tax fraud (section 248) and customs duty crime (section 249). Information.

Section 252

In applying this chapter— Explanatory Provisions.

1. Price fixed by the authority shall mean the price prescribed by the authority or to be applied by virture of a disposition of the authority.

2. Goods shall be deemed also be include industrial or other services of an economic character and price shall be deemed also to include the equivalent (fee) of such services and in general also any valuable consideration of pecuniary value due for the goods (performance).

APPENDIX 16 (contd.)

Section 291

Theft — Whoever removes the property of another with an unlawful intent commits a theft.

Section 292

Embezzlement. — Whoever unlawfully appropriates the property of another entrusted to him or disposes of it as if it were his own commits an embezzlement.

Section 293

Fraud — Whoever for unlawful gain induces or keeps another in error or ignorance of the facts and causes thereby prejudice commits a fraud.

Section 294

Malversation — Whoever being entrusted with the management of another's property causes, violating his duty under such a commission, damaged in such property, commits a malversation.

Section 295

Punishment of theft, embezzlement, fraud and malversation to the prejudice of social property.

(1) Whoever commits theft, embezzlement, fraud or malversation to the prejudice of social property shall be punished with loss of liberty ranging from six months to five years.

(2) Punishment shall be loss of liberty ranging from two years to eight years if the crime was committed

(a) by a recidivist,

(b) in criminal partnership,

(c) in a place where it caused public danger.

Punishment shall be,—

(a) loss of liberty ranging from five years to twelve years if particularly grave prejudice was caused by the crime;

(b) loss of liberty ranging from ten years to fifteen years or death if particularly grave prejudice was caused by a crime committed in criminal partnership or by a recidivist.

Section 308

Commission to report a crime to the prejudice of social property.

(1) Whoever obtains credible knowledge that the commission of a wilful crime to the prejudice of social property is under preparation or that such crime not yet detected has been committed and does not report this to the authorities as soon as possible, shall be punished with loss of liberty not exceeding one year.

APPENDIX 16 (concld.)

(2) Under para. (1) a relative of the perpetrator cannot be punished.

Section 298

Negligent Management.

(1) Whoever, being entrusted with the management or supervision of social property infringes or neglects the duty ensuing from this commission and thereby causes damage and prejudice to such property, shall be punished with loss of liberty not exceeding one year.

(2) Punishment shall be loss of liberty not exceeding three years, if particularly grave prejudice was caused by the crime.

(3) Whoever manages the property of another by virtue of an official commission or approval (guardian, curator) and while doing so, infringes his duty by negligence, thereby causing a loss in the value of the property, shall be punished with loss of liberty or correctional-educational work not exceeding one year.

APPENDIX 17

EXTRACT OF CERTAIN SECTIONS OF THE PENAL CODE OF NORWAY ("NORWAGIAN PENAL CODE", 1961) PUBLISHED IN THE AMERICAN SERIES OF FOREIGN PENAL CODES.

88. Anybody who, in time of war, fails to fulfil a contract relating to the supplies or the transport of the military forces or a matter of importance to military or civil defence, or is accessory thereto, shall be punished by imprisonment up to ten years. If the act has caused heavy damage to the defence of the country, or the death or serious injury to body or health of another, a maximum of life imprisonment may be imposed.

If the breach of contract results from negligence, the perpetrator shall be punished by fine, or jailing or imprisonment up to six months.

Anybody who commits such an act against a state allied with Norway, or at war with a common enemy, shall be similarly punished[1]. (12-15-1960).

123. If a civil servant misuses his office to violate somebody's rights by undertaking or omitting an official act, he shall be punished by fines or loss of office or by imprisonment up to one year.

If he has acted for the purpose of obtaining an unlawful gain for himself or another, or if the felony has purposely caused serious injury or a violation of rights, imprisonment up to five years may be imposed.

[1]For a study of "White Collar Crime in Norway," see Aubert, "White Collar Crime and Social Structure". American Journal of Sociology (1952-53), page 265, cited in Reckless, The Crime Problem (1965), page 224.

APPENDIX 17 (contd.)

153. Anybody who by breach of assumed obligations or by spreading of false rumours, brings about famine or scarcity of necessities, or is accessory thereto, shall be punished by imprisonment up to eight years.

273. Anybody who spreads incorrect or misleading information in order to influence the prices of goods, securities or other objects, or is accessory thereto, shall be punished by imprisonment up to four years. Fines may be imposed together with imprisonment. Under extreme ly extenuating circumstances, fines alone may be imposed (5-11-1951)

APPENDIX 18

EXTRACTS OF CERTAIN SECTIONS OF THE ARGENTINA PENAL CODE TAKEN FROM THE TRANSLATION PUBLISHED IN THE AMERICAN SERIES OF FOREIGN PENAL CODES (1963).

249. Any public official who illegally omits, refuses to do or delays any act of his office, shall be punished by a fine from one hundred to one thousand pesos and special disqualification from one month to one year.

300. Jailing from six months to two years shall be imposed on:

1. *anybody who causes the price of any merchandise to be raised or lowered, bond or security to be raised or lowered, by means of false news, fictious negotiations or by connivance or coalition among the principal holders of any merchandise or product, with the purpose to sell it only for a fixed price;*

2. anybody who, disguising or concealing true facts or circumstances, or affirmatively stating or suggesting false facts or circumstances, offers any bond or security of any corporation or society;

3. any founder, president, manager, or receiver of any corporation or co-operative or any other commercial establishment, who publishes or authorizes a false or incomplete balance or report regardless of the purpose he had to publish it.

APPENDIX 19

ENGLISH LAW RELATING TO SPREADING FALSE RUMOURS TO AFFECT PRICES, ETC.

At common law, every practice or device by act, conspiracy, words or news to enhance the price of victuals or other merchandise was held to be unlawful. These practices came under "forestalling" (practices to enhance prices) including ingrossing (buying up standing corn, etc.) for regrating i.e. selling at monopoly prices and

APPENDIX 19 (contd.)

similar offences. Spreading false rumours was also one example of such practices. The bare ingrossing of a whole commodity in order to sell it at an unreasonable price was also an offence[1]. By a statute of 1844[2], the several offences of badgering (buying up corn, etc., and carrying them elsewhere for re-sale), ingrossing, forestalling and regrating were abolished. But section 4 of that Act preserved the common law offence of spreading false rumours to enhance or abate the prices of vendible commodities. The section is quoted below :—

> "Nothing in this Act contained shall be construed to apply to the offence of knowingly and fraudulently spreading or conspiring to spread, any false rumour, with intent to enhance or decry the price of any goods or merchandise, or to the offence of preventing, or endeavouring to prevent, by force or threats, any goods, wares, or merchandise being brought to any fair or market, but that every such offence may be inquired of, tried, and punished as if this Act had not been made."

APPENDIX 20

Position at English Law regarding certain offences

Bribery and corruption.—It is a misdemeanor at common law for an officer who has a duty to do something in which the public are interested, to receive a bribe either to act in a manner contrary to his duty or to show favour in the discharge of his functions[3]. The offence is punishable by fine and imprisonment, whether the bribe is accepted or not. The matter is now provided for in greater detail by several enactments[4], including—

(*i*) The Public Bodies Corrupt Practices Act, 1889 (52 and 53 Vic., c. 63).

(*ii*) The Prevention of Corruption Act, 1906 (6 Edw. c. 37).

(*iii*) The Prevention of Corruption Act, 1916 (6 & 7 Geo. 5, c. 64).

(*iv*) Section 9, Customs and Excise Act, 1952 (15 & 16 Geo. 6, c. 44).

(*v*) Section 123(2), Local Government Act, 1933 (23 & 24 Geo. 5, c. 51).

(*vi*) Sections 171 and 99, Representation of the People Act, 1949 (12, 13 & 14 Geo. 6, c. 68).

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[1]Russell on Crime (1958), Vol. 2, page 1688.

[2]Forestalling, regrating, etc., Act, or Conspiracy Act, 1944 (7 & 8, vic. c. 24) (now repealed).

[3]Archbold (1962), para. 3483.

[4]Archbold (1962), para 3483, 3484, 3996 and 3953.

APPENDIX 20 (contd.)

Conspiracy.—A person may be convicted of "criminal conspiracy" even where the act conspired to be committed would not be an offence if committed by a single person. It is from this point of view that the offence of criminal conspiracy assumes some importance. The generally accepted definition of conspiracy is that given by Justice Wilkes on behalf of all the Judges, is one case[1], namely, an agreement of two or more to do an unlawful act or to do a lawful act by unlawful means[2]. The case-law that has developed on this subject has brought out the wide scope of this offence. Of interest for the present purpose are the following conspiracies held to be criminal—

(*i*) conspiracy to injure the public health, as by selling unwholesome food[3];

(*ii*) conspiracy to combine to violate the provisions of a statute or statutory rule, etc., where the violation of such statute or statutory rule would be a misdemeanour at common law or criminally punishable in some specified manner[4].

(*iii*) conspiracy to do acts contrary to the public morals. The latest case on the subject is that of *Shaw*[5].

Conspiracy to cheat and defraud.—It is stated, that it is really criminal to conspire to commit frauds in trade or public cheats, whether the fraud or cheat, if done by an individual without conspiracy would give only a ground for civil remedies at law or in equity, or would be criminally punishable. Examples of this conspiracy are combination of bankers or officers of companies to deceive and defraud their shareholders by publishing false balance-sheets, or by concealing the insolvency of the bank, and agreements to take part in deceptive schemes in order to raise the price of stocks and shares above their true value, or to raise the price of commodities by fictious sale[6-7].

Conspiracy to prevent, obstruct, pervert or defeat justice.—This falls under three classes:

(*i*) conspiracy to make false accusations of crimes or unfounded civil claims;

(*ii*) conspiracy to threaten to make false accusations or claims; and

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[1]*Mucahy* v. *R.*, Law Reports (1868), 3 H.L. 306, 317.

[2]See discussion in Russell on Crimes (1958), Vol. I, pages 213 and 215.

[3]Russell on Crime (1958), Vol. 2, page 1703.

[4]Russell on Crime (1958), Vol. 2, page 1700, and Archbold (1962), para 4053.

[5]*Shaw* v. *Director of Public Prosecution* (1961), 2 W.L.R. 897. (The case relating to the Ladies Directory).

[6]See cases cited in Russell on Crime (1958), Vol. 2, pages 1712, 1713 and 1715.

[7]See also Archbold (1962), para 4058.

APPENDIX 20 (contd.)

(*iii*) conspiracy to interfere with a fair trial of pending proceedings[1].

Of particular interest is a recent case[2] where the alleged conspiracy by certain police officers to take rewards to hinder prosecutions by not bringing the offenders before the courts or by warning persons concerned of intended prosecutions was in issue.

Conspiracy or combination affecting trade.—These have been the subject-matter of legislation particularly in relation to trade disputes. Subject to such legislation, a criminal conspiracy in restraint of trade which has been defined as an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade (e.g. violence, threats, fraud, or coercion[3-4]) is punishable.

How far combinations to monopolise or divert trade would fall within this definition is a moot question. Criminal prosecutions do not seem to have been undertaken in England in respect of such combinations as being conspiracies in restraint of trade[5].

Cheating.—This is an offence at common law in many cases[6]. It is unnecessary to enumerate the various categories. Akin to this offence is an offence of obtaining goods by false pretences governed by section 32 of the Larceny Act, 1916[7]. (6 and 7 Geo. 5 c. 50).

Conspiracy.—See above.

Embezzlement.—See section 17 of the Larceny Act, 1916[8] (6 and 7 Geo. 5, c. 50). There are several other special Acts also.

False pretences.—See under cheating.

Food.—At common law it is a misdemeanour to sell food or drink with the knowledge that it is dangerous or unfit for human consumption[9]. The Law on the subject is now contained in Food and Drugs Act, 1955 (4 & 5 Eliz. 2 ch. 16), which consolidates the previous Acts

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[1]Russell on Crimes (1958), Vol. 2, page 1707.

[2]*R.* v. *Hammersley* (1958), 42 Criminal Appeals Reports, 207 cited in Archbold (1962), para. 4062.

[3]Russell on Crime (1958), Vol. 2, page 1719, *et seq.*

[4]Russell on Crime (1953), Vol. 2, page 1678.

[5]Russell on Crime (1958), Vol. 2, page 1679.

[6]Russell on Crime (1958), Vol. 2, pages 1322 to 1344.

[7]Russell on Crime (1958), Vol. 2, page 1336 ; Archbold (1962), para. 1982.

[8]Archbold (1962), para. 1701.

[9]Archbold (1962), para. 3735.

of 1938, 1950 and 1954 and certain other enactments. Sections 1 to 12 of the Act are mainly of interest as dealing with offences committed in the preparation and sale of injurious food and adulterated drugs, falsity in libel and advertising in food and drugs and sale of goods unfit for human consumption. (The common law offence is classified either as a public nuisance or as a common law cheating).[1]

Forgery.—The main provisions relating to forgery are contained in section 3 of the Forgery Act, 1913[2]. There are numerous enactments relating to forgery of documents. Of these a few may be noted, namely, section 302 of the Customs and Excise Act, 1952[3]. (15 & 16 Geo. 6 c. 44). Section 36 of the Criminal Justice Act, 1925 (15 & 16 Geo. 5 c. 86) relating to forgery of passport[4], frauds relating to stamps are dealt with by section 13 of the Stamp Duties Amendment Act, 1891[5]. (54 & 55 vic. c. 38). Forgery of several public documents is specifically dealt with the section 3(2) and 3(3) of the Forgery Act, 1913 (3 & 4 Geo. 5 c. 27).

Malicious Damage is dealt with in detail by the Malicious Damage Act, 1861.

Misconduct by public servants (other than bribery).—Neglect by public officers' duty imposed on them at common law or by statute is indictable, and the remedy of criminal information is of interest in this connection[6]. Misconduct by judicial officers in the nature of malfeasance or culpable non-feasance has figured in several cases[7].

Abuses in respect of honours are specifically dealt with by the Honours (Prevention of Abuses) Act, 1925[8] (15 & 16 Geo. 5 c. 72).

Profiteering.—See Prices of Goods Act (1939) section 1, later Goods and Services (Price Control) Act, 1941 (4 & 5 Geo. 6 c. 31).

Public mischief.—The offence of conspiracy to commit a public mischief is an offence which has a very wide scope and its definition is not laid down by statute. Its exact scope is indefinite, but until the decision in *Newland*, it was understood that many acts such as dissemination of rumours calculated to cause widespread alarm, and building

[1]Russell on Crime, (1958), Vol. 2, pages 1606, 1589, 1322.

[2]Archbold (1962), para. 2166.

[3]Russell on Crime (1958), Vol. 2, page 1465.

[4]Rusell on Crime (1958), Vol. 2, para. 1467.

[5]Russell on Crime (1958), Vol. 2, page 1463.

[6]Archbold (1962), paras. 311 and 3334.

[7]Archbold (1962), para. 3491.

[8]Archbold (1962), para. 4000.

defective air-raid shelters and making to the police **false** statements concerning imaginary crimes, fall within the offence of public mischief[1].

In the case of *Newland*[2], it was held that these offences were part of the law of conspiracy. If the act is committed by an individual and not in conjunction with others, then it is indictable only if it is an offence in itself at common law or by statute.

Sabotage.—See "Malicious Damage".

Share pushing.—See section 13 of the Prevention of Fraud (Investments) Act, 1958 (6 & 7 Eliz. 2 ch. 45). Roughly stated, it punishes a person who, by publishing a misleading statement, promise or forecast or by any dishonest concealment of facts or by reckless statement, etc. induces another person to enter into an agreement for *acquiring or subscribing for securities, etc.*[3].

Smuggling.—See the Customs and Excise Act 1952, section (45) (*1*) and section 304[4].

Tax.—As various enactments relating to taxation contain penal provisions, it would not be possible to summarise them here. But apart from statute, the making of false statements relating to income-tax with intent to defraud the Revenue has been held to amount to a common law misdemeanour[5-6-7]. Section 5 of the Perjury Act, 1911 (1 & 2 Geo. 5 c. 6) which is quoted below, is also of interest:—

"5. **False statutory declarations and other false statements without oath.**—If any person knowingly and wilfully makes (otherwise than on oath) a statement false in a material particular, and the statement is made—

(*a*) in a statutory declaration; or

(*b*) in an abstract, account, balance sheet, book, certificate, declaration, entry, *estimate*, inventory, notice, report *return*, or other document which he is authorised or required to make, attest, or verify, by any public general Act of Parliament for the time being in force; or

Compare ss. 191 and 199 Indian Penal Code.

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[1]Archbold (1962), para. 3481.

[2]*R.* v. *Newland* (1953), 2 A.E.R. 1067 (C.C.A.).

[3]See Report on Share pushing (1982, Cmd. 5539 and (1941) Annuals of American Academy of Political and Social Science, Vol. 217, Crime in the U. S.

[4]See Archbold (1962), paras. 3341—3342.

[5]*R.* v. *Huon* (1966), 1 A.E.R. 814 (1956), 2 Q.B. 252. dson.

[6]Archbold (1962), para. 3547.

[7]Halsbury 3rd Edn., Vol. 20, page 720, para. 1448.

(c) in any oral declaration or oral answer which he is required to make by, under, or in pursuance of any public general Act of Parliament for the time being in force;

he shall be guilty of misdemeanour and shall be liable on conviction thereof on indictment to imprisonment....for any term not exceeding two years, or to a fine or to both such imprisonment and fine.".

A false statement on oath *before* an income-tax Appeal Tribunal consisting of two Commission amounts to perjury, as such a tribunal falls within section 1(2), Perjury Act, 1911[1].

The provisions of the Income-tax Act in U.K. do not affect any criminal proceedings for felony, etc., or for misdemeanour, under section 503 of the Income-tax Act, 1952 (15 & 16 Geo. 6 c. 10).

The following criminal remedies are open against a person for frauds on the taxation law[2]:—

(i) Fraud at common law, under the decision in *R. v. Hudson*[3],

(*ii*) Offences under the Perjury Act, 1911 [section 1(*1*) for false statement on oath at the appellate hearing before the Special Commissioner and section 5(*b*) for false statement not on oath knowingly and wilfully made in a return etc. required by Act of Parliament[4].]

(*iii*) Offence under the Forgery Act, 1913 (3 & 4, Geo. 5, c. 27[5]);

(*iv*) Conspiracy to defraud[6];

(*v*) Other suitable offence according to the circumstances.

In addition, there are penal provisions in the Income-tax Act, 1952, section 43(3) and section 505. As to profit tax, see section 28 of the Finance Act, 1943, and section 44 of the Finance Act, 1946[7].

Under section 468 of the Income-tax Act, 1952, a person who is knowingly a party to the doing of any act amounting to something which is unlawful under the provisions against avoidance of income-tax or profit tax liability by a body corporate taking certain steps as to residence in the United Kingdom is punishable with imprisonment up to

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[1] *R.* v. *Hood-Bars* (1943) K. B. 455, (1943) 1 A.E.R. 665.

[2] *Cf.* Halsbury, 3rd Edn., Vol. 20, page 720, para. 1448.

[3] R. v. *Hudson* (1956), 20B,"252 ; A.I.R. 814.

[4] See also Halsbury, 3rd Edn., Vol. 10, page 623.

[5] Halsbury, 3rd Edn., Vol. 10, page 840.

[6] See Halsbury, 3rd Edn., Vol. 10, pages 834-835.

[7] See Halsbury, 3rd Edn., Vol. 20, page 665, and page 722.

APPENDIX 20 (concld.)

2 years or fine up to £ 10,000. Consent of the Attorney General is required for prosecution under this provision.

There is no general provision creating the offence of evading or avoidance of tax.

APPENDIX 21

ECONOMIC CRIMES IN CERTAIN EASTERN-EUROPEAN COUNTRIES

Apart from Russia and Hungary, provisions relating to economic crimes exist in certain other countries of Eastern Europe. A brief summary of the important provisions is given below.

Albania

The Criminal Code, 1952 of Albania[1] contains Chapters dealing with penalties for theft, waste, misuse and other forms of destruction of Government or social property (Chapter 2) as well as detailed provisions relating to economic crimes (Chapter 3).

The economic crimes include crimes in industrial production and against the monopoly of foreign trade, offences against regulations of internal trade and against financial regulations, evasion of taxes, and failure to deliver agricultural quotas. Certain important features are—

(*a*) Death penalty is permissible for economic crimes[2].

(*b*) Confiscation of property is mandatory in economic crimes, excepting in 3 cases. (Under Article 25, certain objects like furniture, foodstuffs etc. are not confiscated.)

(*c*) The prosecution can transfer cases relating to economic crimes to military courts.

Bulgaria

The Criminal Code of 1951 (Bulgaria), Chapter 4, deals with the crimes against the national economy. Important provisions are quoted below[3]:—

"Section 113.—An official who fails to apply sufficient care in the direction management or protection of the property entrusted or the work assigned to him, which failure results in considerable damage, destruction or waste of property, or partial or total non-fulfilment of the economic assignments, or in any other considerable damage to the enterprise, shall be

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[1] See G. & G. Government Law in the Soviet Union, pages 979, 981 and 982.

[2] For wilful destruction of State property also, death sentence can be awarded under articles 85 and 89.

[3] See G. & G. Government Law in the Soviet Union etc., page 990.

published by confinement up to five years or correctional labour. If the act has been committed intentionally but does not contain the elements of a grave crime, the punishment shall be confinement from three to ten years.

Section 117.—Whoever fails to carry out a lawful regulation concerning performance of work or delivery of products in connection with the economic plan or the economic undertakings of the government, shall be punished by confinement up to three years, or, in cases of minor importance, by correctional labour or fine up to 20,000 leva.

Section 119.—Whoever uses agricultural products received from the State for purposes other than those for which they have been issued shall be punished by confinement up to three months or fine up to 50,000 leva.

Section 121.—Whoever without proper authorization purchases with the intent to sell or resell agricultural products or other goods of mass consumption shall be punished by confinement up to five years or correctional labour".

Czechoslovakia

Sections 85, 135 and 136 of the Criminal Code for Courts (as amended in 1956) are quoted below[1]:—

"85. (*1*) Whoever fails to discharge; or violates; or evades the duty of his profession, occupation, or service; or commits any other act from hostility toward the People's Democratic order with the intent:

(*a*) of frustrating or obstructing the carrying out or accomplishment of the Government plan for the development of the national economy in some sector; or

(*b*) of causing serious disturbance in the activity of a public authority or other agent, nationalized enterprise, people's co-operative, or any other organization of the socialist sector shall be punished by confinement for from 3 to 10 years.

Section 135.—(*1*) Whoever, by negligence, frustrates or obstructs the operation or the development of the government, national, communal or other public enterprise or of a people's co-operative, particularly by failing to discharge or by violating the duty of his profession, occupation, or his service by evading the fulfilment of such a duty shall be punished by confinement not to

[1]Based on G. & G. Government Law, etc. in Soviet Union, etc., pages 1017 and 1019.

exceed 1 year and by fine or (under aggravating circumstances) by confinement for from 3 months to 3 years and by a fine.

Section 136.—If a private businessman or other person who is responsible for the management of his enterprise fails—even through negligence—to discharge an obligation resulting from the uniform economic plan or from required public deliveries or public works, he shall be punished by confinement not to exceed 6 months.".

Poland[1]

Economic crimes in Poland are dealt with in the "Small Criminal Code" of 1946, Chapter III (Articles 39—45) and other special laws[2]. A brief summary of important provisions is given below:—

(1)	(2)
Article 39	Adversely affecting the level of production, or lowering the productivity of an individual's own work or that of subordinate personnel, or for dereliction of duty either in taking proper care of the technical equipment of the enterprise, of its raw materials, or produced goods or causing deterioration of equipment or wastage of raw materials for goods. (Punishment up to 15 years' imprisonment).
	Under the amendment of Decree of 4th March, 1953 (penalties for Marketing of Goods of defective quality), penalties for introducing into distribution goods unfit for consumption or of inferior quality compared with official standards have been enhanced.
Article 40	Diverting to a free marke of goods assigned for distribution through Government stores. (Punishment up to 15 years' imprisonment).

[1]The position as in 1960 has been stated here. Thereafter, there was movement for reform, but material about that could not be obtained.

[2]Summarised from material in G & G, Government Law etc., in Soviet Union, page 1064 *et seq.*

APPENDIX 21 (contd.)

(1)	(2)
	Unintentional transgression by failure to exercise proper control and supervision is a lesser offence. (Punishment up to 5 years' imprisonment).
Article 41	Offences against the planned distribution of goods, whether committed with criminal intent or without intent. (Punishment up to 15 years' imprisonment).
Article 42	Wilful or constant failure by the manager of an enterprise to take proper care of the welfare of subordinate personnel, thus adversely affecting their interests. (Punishment up to 5 years' imprisonment).
Decree of March 4, 1953 . (Decree for Protection of Buyers' Interest in Trade).	Section 1 of Article 1 of the Decree is quoted below :— "Whoever *speculates* with articles of everyday consumption or other goods, in particular by buying up goods in establishments or other places of retail with the purpose of selling them for profit ; hides or hoards goods of everyday consumption, with such *purpose in excessive amounts charges prices* in such establishments, for any goods, thus *gaining excessive profit* in *cases* in which there is no properly fixed price ; or by any action contributes to difficulties in retailing goods, conducted deliberately with speculative purposes shall be punished by detention (maximum 5 years) and fine or by imprisonment up to five years and fine." (Under Article 1, section 2 of this decree, punishment for habitually engaging in speculation for repeated conviction is imprisonment from 2 to 10 years and fine.)

[1] In a case decided on 14th March, 1950 on the previous section—Article 10 section 1 of Law of June 4, 1957 on High Prices, etc., the Supreme Court explained that a person buying up or hoarding goods in excess of his normal needs was guilty.

APPENDIX -21 (contd.)

(1)	(2)
Two decrees of March 4, 1953, concerning strengthening of the protection of socialist property and concerning the protection of socialist property against petty theft (both amended by the Decree of December 23, 1954).	Under Article 1, section 1 of the first Decree, stealing, appropriating, obtaining without intent to pay or in any way seizing socialist goods is punishable by imprisonment up to 5 years. On a second conviction, imprisonment up to 10 years can be awarded under section 2. In aggravating circumstances, the theft of socialist property is punishable by imprisonment up to 10 years and not less than 2 years, under section 3. If the offender has caused major damage to the economic interest or the defence of the State, the punishment cannot be less than 5 years' imprisonment and even imprisonment for life can be awarded.
Decree of March 28, 1952 . .	Offences against foreign currency regulations can be punished with imprisonment up to 15 years or even for life, and there are provisions for a minimum sentence of 2 or 5 years' imprisonment.
Article 286, Penal Code of 1932 .	Abuse of power. (This has been now widely interpreted as covering not only cases of dishonesty, but as also including negligence and lack of foresight.)

For several offences, including many economic crimes, "Summary Criminal Proceedings" are permissible under the Polish law, and these offences include crimes committed to the detriment of the State, public authorities, institutions of a public character, co-operatives, enterprises owned or managed by the State or public authorities, and other criminal acts which endanger the *economic interests* of the People's Republic or expose it to considerable losses. For these offences, death sentence or imprisonment for life can be awarded[1], (irrespective of the punishment prescribed in the statute relating to the particular crime[2]).

[1] See G & G, Government Law, etc., in the Soviet Union, pages 1073, Item (*b*) and 1074, middle.

[2] Law of November 16, 1956 (amended in 1949) on summary proceedings in criminal courts.

APPENDIX 21 (contd.)

Rumania

The main articles in the Criminal Code of Rumania relating to economic crimes are articles 268, 242 and 385 of the Criminal Code (No. 927). Economic crimes are regulated under the title of "Offences against the Economic System" and under the sub-title of "offences affecting the public administration".

The main economic crimes are[1]:—

(*a*) violations of regulations regarding production and distribution of consumer goods;

(*b*) distribution of products, which do not meet mandatory rules of standardization;

(*c*) establishing fictitious co-operatives;

(*d*) failure to observe legal provisions with "intent to evade", even without criminal intent or negligence;

(*e*) non-observance of legal provisions regarding State monopolies of foreign commerce;

(*f*) *failure to pay taxes in time;*

(*g*) *evasion of tax;*

(*h*) public officer guilty of *carelessness, lack or laxity* in the performance of his services, thus causing delay or difficulty in the fulfilment of the official economic plan, disturbance to the proper functioning of collective organization or damage to collective property or to the general interests of the citizens (article 242);

(*i*) failure to deliver agricultural goods reserved for Government stores;

(*j*) *hoarding of goods;*

(*k*) breach of collective labour contracts;

(1) infringement of regulations concerning ration cards.

(*m*) counterfeiting currency and bonds (article 383). Punishment upto 25 years' imprisonment can be awarded for counterfeiting; and if the act has caused or would have caused considerable damage to the financial system, total confiscation of property can be ordered;

(*n*) Article 536 contains detailed provisions for offences affecting collective property.

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[1]Summarised from material in G & G, Government Law, etc., in Soviet Union, pages 1093—1096.

APPENDIX 21 (concld.)

Yugoslavia

In Yugoslavia the Criminal Code of 1951, sections 213 to 248 (Criminal Offences against the National Economy) deal with economic crimes. The important provisions are :—

(*a*) sellers giving special favours to individual buyers (section 228);

(*b*) barter (section 229);

(*c*) failure to fulfil the contractual duty of delivery of a fixed quality of products to Government (section 236);

(*d*) owner of land failing to cultivate the land or reducing his livestock (section 238);

(*e*) members of agricultural cooperatives opposing the management of the affairs of the cooperatives (section 240);

(*f*) illegally carrying on a trade as a professional practice, or illegally selling, purchasing or bartering goods or articles the traffic in which is forbidden or limited; or illegally keeping such goods or articles for commerce or producing or processing goods the production or processing of which is forbidden (section 226): (Confiscation of the goods can also be ordered).

APPENDIX 22

Tax Evasion Provision in U.S.A. (Section 7201, Internal Revenue Code)

Section 7201, Internal Revenue Code.

There is a general provision as to tax evasion in section 7201 of the Internal Revenue Code of the United States of America, and it will be of some use to deal with it in detail: The section is quoted below:—

Attempt to evade or defeat taxes.

"7201: Any person who wilfully attempts in any manner to *evade or defeat* any tax imposed by this title[1] or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony, and, upon conviction thereof, shall be fined not more than $10,000:00 or imprisoned not more than 5 years, or both, together with the costs of prosecution."

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[1]Summarised from G & G, Government Law, etc., in Soviet Union, pages 1120 to 1122.

The taxes covered by the various sub-titles of the Internal Revenue Code are—

A. Income Taxes ;

B. Estate & Gift Taxes;

C. Employment Taxes;

D. Miscellaneous Excise Taxes;

E. Alcohol, Tobacco and certain other Excise Taxes.

APPENDIX 22 (contd.)

There is another section dealing with wilful failure to file return, but we are not concerned with that section here.[1]

This section has replaced section 145 (b) of the Internal Revenue Code, 1939, which in its turn had replaced section 1017(b), Revenue Act, 1924. The old section was regarded as the "capstone of a system of sanctions which singly or in combination were calculated to induce prompt and forthright fulfilment of every duty" under the income tax law[2]. The important words in the section are "*wilfully* attempts in any manner to *evade or defeat* any tax". The constitutional validity of the section (with reference to the due process clause) appears to have been upheld[3].

Prosecutions under the section have been instituted mainly in the following situations (if the requisite intent is proved):—

(a) substantial understatement of income;

(b) substantial overstatement of deductions;

(c) attempted evasion of tax by [4] evading joint income-taxes of spouses (where the spouse or spouses charged are party to the fraud);

(d) lawyers and accountants participating in tax frauds;

(e) officials of corporations attempting evasion of the tax payable by the corporation concerned;

(f) false claims to exemption.

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[1]Section 7203 of the Internal Revenue Code is quoted below :—

"7203, *Wilful failure to file return, supply information, or pay tax.*—Any person required under this title to pay any estimated tax or tax, or required by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who wilfully fails to pay such estimated tax, make such return, keep such records, or supply such information, at the time or time required by law or regulations, shall, in addition to other penalties provided by law, be guilty of misdemeanor and, upon conviction thereof, shall be fined not more than $ 10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution."

[2] Spies v. United States (1943), 317 U. S. 492, 497.

[3] *U.S.* v. *Skidmore*, 123 F. 2d, 604 cert. denied (1942) 315 U.S. 800.

[4] A husband and wife can file a joint return. Tax is computed on half the combined income and multiplied by two. Sections 2(*a*) and 6013(*a*), Interenal Revenue Code.

APPENDIX- 22 (contd.)

We may first take up the word "wilful" in the section. This requires proof beyond reasonable doubt of a specific intention to evade or defeat the tax or its payment. A *bona fide* belief in a particular legal position would take away the case out of "wilful"[1].

Intent

The intent must be specific, that is to say, a mere general intention to perform an illegal act is not sufficient. Nor is it presumed or inferred merely from the filing of an incorrect or understated tax return. The concealment of an obligation known to exist, as distinct from a genuine misunderstanding of what the law requires, is essential[2]. It something more than "intentionally" and requires an evil motive as well as want of justification. Honest mistake and belief in good faith are complete defences to a prosecution for evasion. And negligence can never amount to wilfulness.

But since intention can never be gathered by direct evidence, all relevant circumstances are taken into account, including the background and education of the accused, the nature of the acts involved, his professional experience etc[3].

Mere possession of large amounts of unaccounted cash, while it may be some evidence, does not *always* establish the taxability of the amounts involved[4]. It has been held by the Supreme Court that an "affirmative act" is required in proof of "wilful evasion". This, it is stated, is implied from the word "attempt"[5].

Affirmative acts.

Many of the "affirmative" acts have been enumerated by the United States Supreme Court in the *Spies case*[6], though the court took care to observe that what it enunciated was merely by way of illustration, and pointed out that Congress had not defined or limited the methods by which a wilful attempt to defeat and evade might be accomplished and, that perhaps the Congress did not define lest its effort to do so result in "some unexpected limitation". The illustrations given by the Supreme Court in the *Spies* case are quoted below.

> ".....affirmative wilful attempt may be inferred from conduct such as keeping a double set of books, making false invoices or documents, destruction of

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[1] *Cf. James* v. *U.S.*, (1961) 366 U.S. 215.

[2] *United States* v. *Martell*, 199 Federal 2d 670, cert. denied (1953) 345 U.S. 917.

[3] *Capone* v. *U.S.*, 56, Federal 9d 296, cert. denied (1232) 286 U.S. 593.

[4] *United States* v. *Nunan*, 236 Federal 2d 576, cert, denied (1957) 353 U.S. 912.

[5] *Spies* v. *U.S.* (1943) U.S. 492, 498.

[6] *Spies* v. *United States*, (1943) 317 United States 492, 499. (Jackson . delivering the opinion of the Court).

APPENDIX 22 (contd.)

books or records, concealment of assets or covering up sources of income, handling of one's affairs to avoid making the records usual in transactions of the kind, and any conduct, the likely effect of which would be to mislead or conceal.; If the tax-evasion motive plays any part in such conduct the offence may be made out....."

Besides the enumeration given in the *Spies case,* the following have been used as evidence of wilful intent to defraud :—

(*a*) use of large amounts of currency;[1]

(*b*) a much visited safety deposit box;[2]

(*c*) purchase of property in the names of others;[3]

(*d*) bank accounts in fictitious names;

(*e*) diversion of funds from business; and

(*f*) failure to keep books and records coupled with under statement of income.[4]

False return. Since the illustrative list given in the *Spies case* does not say anything about filing false income-tax return, the question has been raised whether that would amount to attempt to evade tax. The question seems to have been answered in the affirmative by Appellate Courts. The Supreme Court has also held, that the positive act of wilfully filing a false claim in order to defeat the tax supports a charge under this section[5]. The question, however, cannot be regarded as absolutely settled.

Understatement. Mere understatement of income does not support an inference of wilfulness, etc., but a consistent pattern of under-reporting large amounts of income may support it[6].

Attempt. As regards the expression "attempt" to evade tax, it has been decided[7] that the attempt need not consist of conduct which would have culminated in a more serious crime but for some impossibility etc. The prosecution can only be for the attempt. The attempt itself is an independent crime. Nothing is added to its criminality by success or consumation.

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[1] *Schuermann* v. *United States,* (1949) 174 F 2d 397; certiorari denied 338 U.S. 831.

[2] *Ibid.*

[3] *Ibid.*

[4] *Holland* v. *U.S.*, (1954) 348 U.S. 121, 137 & 139.

[5] *Achili* v. *United States.* (1957) 358 U.S. 373.

[6] Holland v. U.S. (1954) 348 U.S. 121.

[7] *Spies* v. *United States,* (1943) 317 U.S. 492.

APPENDIX 22 (contd.)

"Evade" and "defeat".

Though both the words "evade" and "defeat" have been used, and they are divided by the conjunction "or", the two are usually treated as synonymous, and indicate cheating on taxes by any devise. It must be added that an attempt to defeat the payment of taxes by obstructing the processes for collection has also been regarded as evasion[1].

Failure to pay tax by itself, however, is not "evasion"[2].

Failure to file a return.

Similarly, mere *failure to file* return would not ordinarily amount to an offence under this section[3], in the absence of some affirmative act showing "wilfulness". A mere passive neglect of the statutory duty of filing a return does not fall under section 7201. *Prior* failure is, however, sometimes regarded as evidence of an attempt to evade, though the position on this point is not very clear. Courts usually treat section 7201 as one intended to secure enforcement of the substantive provisions of the tax law, and section 7203 as one intended merely to secure the enforcement of its administrative provisions.

Taxes avoided.

Prosecutions under section 7201 are mostly in respect of income-tax, but prosecutions have been instituted for attempted evasion of the following taxes, namely, excess profits tax, social security taxes, estate duties, admission taxes, etc.

The limitation period for prosecution is six years[4] from the date of the wilful attempt. Ordinarily, the filing of the false return is the mode of evasion charged, and the time therefore runs from the date of the return.

While penalties for making false or fraudulent returns with intent to defeat or evade tax have been there in American law since the first Income-tax Law passed on 5th August, 1861, the two World Wars focussed attention on the need for an efficient *machinery* for investigating tax frauds. The Intelligence Bureau of the Internal Revenue was formed in 1919. In 1924, wilfully attempted tax evasion was changed from a misdemeanour to a felony. The discovery of rackets in business and operations in black-market after the Second World War led to increased activities in prosecution of offenders for tax evasion also. In recent years, the investigating staff of the Internal Revenue Service has been strengthened.

Principle followed.

A prosecution for evasion of tax is not ordinarily instituted, unless (*i*) there is a proof that the tax-payer is

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[1] *United States* v. *Bardin*, 224 Federal, 2d 225, cert. denied in (1956) 350 U.S. 883.

[2] Failure to pay tax or file return may however fall under section 7203, Internal Revenue Code.

[3] *Spies* v. *U.S.* (1943) 317 U.S. 492.

[4] Section 6531 of the Internal Revenue Code.

guilty beyond reasonable doubt, and (*ii*) there is a reasonable probability of securing a conviction. "Civil" penalties charging extra tax can also be imposed, and in most cases only the civil penalty is applied. The distinction between civil and criminal fraud may depend on the flagrancy of the offence, the available evidence and the Government's burden of proof[1].

Administrative Machinery

Administrative machinery.

The Internal Revenue Service (an Agency of the Treasury Department) collects the taxes imposed by the Internal Revenue Code. Its headquarters are in Washington, and it has 9 regional offices, 64 district offices and over 1,200 sub-offices[2].

So far as the question of investigation of frauds is concerned, its hierarchy is as follows[3]: —

(*1*) *National office at Washington* Intelligence Division—

(*a*) Tax Fraud Branch;

(*b*) Special Investigations Branch.

(*2*) *Office of the Chief Counsel*—

Assistant Chief Counsel (Enforcement).

(*3*) *Office of the Regional Commissioner*—

Regional Commissioner.

Regional Counsel.

(Chief Counsel's Office).

Assistant Regional Commissioner (Intelligence).

(*4*) *District Director's Office*—

(*a*) District Director;

(*b*) Assistant District Director, Intelligence Division—

(*a*) Tax Fraud Branch;

(*b*) Special Investigation Branch.

Criminal cases relating to tax evasion are investigated by the officers of the Internal Revenue Service, scrutinised by the Enforcement Division of the Regional Counsel and prosecuted by the Tax Division of the Department of Justice. That Department has a full-fledged Criminal Tax Section, having several Attorneys.

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[1] Crockett, Federal Tax System of United States, (1955), Page 136.

[2] Crockett, Federal Tax System of U.S., (1955), page 136.

[3] Based on information given in Crockett, Federal Tax System of U.S., (1955), pages 243, 246.

APPENDIX 22 (contd.)

In each district, there is a District Director of Internal Revenue, controlled by the Assistant Regional Commissioner, Intelligence. Ordinarily speaking, the District Director, acting through the Chief, Intelligence Division, is in charge of investigation of criminal violations of the Revenue laws. Special officers of the Intelligence Division (called "Special Agents"[1]) investigate cases of frauds, and the District Director, with the concurrence of the Chief, Intelligence Division, recommends prosecution and sends the recommendations to the Assistant Regional Commissioner (Intelligence). If the latter agrees with the recommendations, he transmits the papers to the Regional Counsel, and the case is assigned in the latter's office to an Attorney in the Enforcement Division, who determines whether the evidence shows guilt beyond reasonable doubt and a reasonable probability of conviction. He then sends the case to the Criminal Tax Section of the Department of Justice.

Important cases are scrutinised by the Chief Counsel, Enforcement Division at Washington.

The Tax Division of the Department of Justice, through its Criminal Tax section, is the final authority to decide whether to proceed with the prosecution or not[2]. Its attorneys are highly specialised in tax frauds work. If a tax-payer asks for discussion at a conference, the request is granted. The object of this conference is not settlement; it is intended to give the tax-payer an opportunity to explain suspicious circumstances. Tax-payers are allowed to appear through Counsel in such conferences.

Actual prosecution is conducted by a United States Attorney[3].

Where there is no intent to defeat a tax, a compromise might be entered into; otherwise it is not entered into. The civil liability is discussed only after the criminal case is disposed of, unless the court directs otherwise. The judicial determination of the amount of the proposed civil liability is supplied to the tax payer, but settlement of the civil liability is not discussed until the penal case is decided[3]. This course is adopted in order to render futile any attempt to offer to pay the civil tax liability and get the criminal case dropped. It is also believed, that since prosecution is a graver penalty, it must be disposed of first. Lastly, a prosecution in order to achieve its deterrent object, must occur at a time close to the date of the offence.

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[1] Casey, Federal Tax Practice, (1955), Vol. 4, Paragraph 15·3 and 15·4.

[2] Casey, Federal Tax Practice, (1955), Vol. 4, para. 15·5.

[3] Casey, Federal Tax Practice, (1955), Vol. 4, para 15·6.

APPENDIX 21 (concld.)

Other sections.

Apart from section 7201 of the Internal Revenue Code, there are certain other sections in the Internal Revenue Code which deal with wilful failure to collect etc. tax or to file a return or to pay tax or to keep records etc.

Further, section 287 (false claims for refund), section 371 (conspiracy to defraud), section 1001 (false statement) and section 1621 (perjury) of the Criminal Code (U.S. Code 18) can also be used for punishing various types of offences relating to tax. It is not, however, necessary to quote them here.

APPENDIX 23

The Penal Code and the Prevention of Corruption, etc., Act

The Prevention of Corruption Act, 1947 creates only one substantive offence, namely, "criminal misconduct", which is defined in section 5(*1*). The main object of the Act was to deal with the kind of "misdemeanour in which Government servants or public officers with no ostensible means of support or inadequate support are living obviously above their income and are in a position to invest in property, which it appears on the face of it to be impossible that they should have had the money to acquire or at any rate that they should have got those resources honestly"[1]. It was felt that it was difficult to pin down, because in such cases all that the Government or the police could find was that the Government servant could have no ostensible source, which could be accounted for as the basis of extravagant expenditure. No *specific* action could be alleged against him or proved in the way of accepting a bribe or obtaining the money by corrupt means. The object of section 5 was to make it possible to detect and punish officers who had "managed to evade detection in that way"[2].

The proposal for enacting the Act arose out of the recommendation made by a Committee appointed in Bengal in 1944, which suggested that legislation was necessary to tighten up the law relating to bribery and corruption. The Provincial Government of Bengal referred the matter to the Central Government, suggesting Central legislation[3].

The recommendation was, that a new offence should be created to provide, that if a public servant was in possession of accretion of wealth, he should be deemed guilty of the offence of criminal misconduct, etc., unless

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[1]Speech of Mr. Porter, Home Secretary, Council of State Debates, dated 25th Feburary, 1947, Vol. I, No. 5, page 180 *et seq.*

[2]*Ibid.*

[3]Speech of Mr. Porter, Council of State Debates, 25th February 1947 Vol. 1, No. 5, page 180 *et seq.*

APPENDIX- -23 (contd.)

he could prove that the accretion was honestly obtained. Now, it was not possible to frame a substantive clause creating such an offence. The only way in which the object (of making the unaccountable possession of more money than a public servant ought to have an offence) could be achieved, was the enactment of the presumption in section 5(*3*). Clause (*c*) was put to make it clear, that of the various ways by which a public servant could improperly acquire wealth, this was one[1]. It may not be possible to pin a public servant down that he has received a money as a *bribe* or by *misappropriation* or by *abuse*. All that could be proved was, that the public servant had been buying property or acquiring a fleet of motor cars, etc., beyond his means. That explains the form of section 5.

While bribery is a form of curruption, the long title of the Act makes it clear that other forms of curruption are also sought to be checked by the Act. As it is a socially useful measure conceived in the public interest, it is to be liberally construed so as to bring about the desired object of preventing corruption among public servants and at the same time, harassment of the honest among them[2].

Though four classes of misconduct are mentioned in section 5(*1*) (*a*) to (*d*), apparently a charge merely under section 5(*2*) would suffice[3].

The ingredients of the offence are described in section 5(*1*), and the penal provision is in section 5(*2*)[4].

It would be useful to note the points of difference between the Indian Penal Code and the Prevention etc. Act. The latter Act contains various special rules of *evidence*, investigation and procedure which show how the provisions of the Act differ from the Indian Penal Code. The most important provision of the Act is section 5(*3*), under which possession of pecuniary resources or property disproportionate to the known sources of income raises a rebuttable presumption that the accused is guilty of "criminal misconduct"[5]. Another presumption is that enacted in section 4 about motive, etc.[6-7].

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[1] *Ibid.*

[2] *M. Narayanan* v. *State of Kerala*, (1963), 2 Crim, L.J. 186.

[3] Compare *Sajjan Singh* v. *State of Punjab*, A.I.R. 1964. S.C. 464.

[4] *Ram Sagar* v. *State of Bihar*, (1964) 2 Criminal Law Journal 65, 68, para. 8 (Supreme Court).

[5] *Sajjan Singh* v. *State of Punjab*, A.I.R. 1964 S.C. 464.

[6] See *State of Madras* v. *Vaidyanathan*, A.I.R. 1958 S.C. 61.

[7] *In re P.S. Aravamudhu*, A.I.R. 1960 Mad. 27 (Ramaswamy J).

APPENDIX 23 (contd.)

[As to section 4(*1*) of the Prevention etc., Act, it may be pointed out that the presumption under that is obligatory[1-2]].

The points of difference as to substantive provisions are analysed below.

CHART NO. 1

(*Obtaining gratification*)

Section 161, Indian Penal Code.	Section 5 (1)(*a*), Prevention etc., Act.
Offence can be committed by a person who *is or expects to* be a public servant.	Offence can be committed *only* by a public servant.
An isolated act is enough.	There must be habitual acceptance, etc., of gratification.
The punishment is imprisonment upto 3 years or fine or both.	The punishment is imprisonment[t] up to 7 years, and *also* fine[t] Further, the imprisonment[t] shall not be less than one year in the absence of special reasons to the contrary. Section 5 (2). As regards fine the court must take into consideration the various factors mentioned in section 5 (*2A*).

CHART NO. 2

(*Obtaining valuable thing without consideration*)

Section 165, Indian Penal Code.	Section 5 (*1*)(*b*), Prevention, etc., Act.
An isolated act is enough	There just be *habitual* acceptance, etc., of any valuable thing without consideration, etc.
Punishment is imprisonment upto 3 years or fine or both.	Punishment is imprisonment[t] upto 7 years, *and also fine*. Imprisonment should not be less than one year in the absence of special reasons to the contrary. Section 5(2). Regarding fine, the factors mentioned in section 5 (*2A*) should be considered.

[1] *Dhanvantrai Desai* v. *State of Maharashtra* A.I.R. 1964 S.C. 575.

[2] *State of Gujarat* v. *Madhav Bai*, A.I.R. 1964 Gujarat 206.

[3] On S. 5 (1) (a) generally. See *Ram Krishna* v. *State*, A.I.R 1944 S. C. 476.

APPENDIX—23 (contd.)

CHART No. 3

(*Misappropriation, etc.*)

Section 405, Indian Penal Code.	Section 5 (1)(c) Prevention, etc. Act.
There must be *dishonest* misappropriation or conversion for own use or use or disposal in violation of law, etc., under section 405.	It is enough if there is "dishonest" or "fraudulent" misappropriation[1] or *otherwise* conversion for own use[2].
Regarding use or disposal, it must be in violation of a direction of law or legal contract.	This is not necessary.
The public servant must be "entrusted" with property or with any "dominion" over it.	The property must be entrusted to the public servant, or must be *under his control* as a public servant.
If the public servant does not commit the misappropriation himself, it is requisite that he must "*wilfully* suffer" any other person to do.	It is sufficient if he *allows* another person to do so.
Punishment is imprisonment upto 10 years and also fine.	Punishment is imprisonment upto 7 years and also fine. Imprisonment must be for at least one year etc., section 5 (2).

(*By corrupt, etc., means or abuse of position obtaining any valuable thing, etc.*)

No provision in Indian Penal Code.	Section 5 (1)(d) Prevention, etc., Act.
	The offence of obtaining etc. a valuable thing or pecuniary advantage by "corrupt or illegal means or by otherwise abusing his position as a public servant" (and thus committing criminal misconduct) is new.

[1] *Cf. Om Prakash* v. *State of U. P.*, A.I.R. 1957 S.C. 458.

[2] Lending Government money to others is also covered. *Munna Lal* v. *U.P.*, A.I.R. 1964 S.C. 28, para 10.

[4] *Public Prosecutor* v. *Pachiripilli*. A.I.R. 1955 Mad. 214.

APPENDIX 23 (contd.)

No. provision in Indian Penal Code.	Section 5 (*1*)(*d*) Prevention, etc., Act.
	The words "pecuniary advantage" include cash payment also[1].
	Section 5 (*1*)(*d*) is not confined to direct benefit, and covers cases where a public servant causes wrongful loss to the Government by benefiting a third party[2].
	It may be noted that section 5 (*1*)(*d*) does not require *habitual* acceptance of bribe.[3]

The clause has been interpreted in the under-mentioned case[4].

Section 5(*1*) (*d*) has two main ingredients, first, the means adopted, and the second, the end attained. The means adopted are described as—

(*i*) currupt, or

(*ii*) illegal means, or

(*iii*) otherwise abusing his position as public servant.

The expression abuse of position is not defined, but "dishonesty", it has been held,[5] is implicit in the word "abuse".

As regards *the end* to be obtained, it is provided that the public servant must have obtained—

(*a*) for himself, or

(b) for any other person, a valuable thing or pecuniary advantage.

It is not necessary that the public servant must do something in connection with his duty.[6-7]

[1] *Mahfuz Ali* v. *The State*, A.I.R. 1953 All. 110 (B. Mukerji J.)

[2] *M. Narayanan Nambiar* v. *State of Kerala* (1963) 2 Crim, L.J. 186 (S.C.).

[3] *Mahfuz Ali* v. *State*, A.I.R. 1953 All. 110, 112, para. 15.

[4] *Bhagwan Sahai* v. *State of Punjab*, A.I.R. 1960. S.C. 487.

[5] *M. Narayanan* v. *State of Kerala* (1963), 2 Cr. L.J., 186 (S.C.)

[6] *Dhaneshwar* v. *Delhi Administration*. A.I.R. 1962 S.C. 1965.

[7] *In* re *K. V. Ayyaswamy*, A.I.R. 1965 A.P. 105.

APPENDIX 23 (concld.)

Section 5(*1*) (*d*) is thus wide enough to cover—

(*a*) almost all acts which would be offences under section 5(*1*) (*a*) to (*c*), or the relevant Section of the Indian Penal Code, and

(*b*) many acts which would not be offences under section 5(*1*) (*a*) to (*c*)

APPENDIX 24

SUBSTANDARD GOODS AND CHEATING

The point for consideration is whether, where a person has supplied goods of inferior quality, or goods which are not according to specification, or of lesser quantity than stipulated, his act comes within the scope of section 420, Indian Penal Code.

(*1*) There is only one reported Indian case in which the matter seems to have been directly dealt with[1]. The facts were these. The accused contracted to deliver to Rau Brothers 260 "dokras" of fully good, machine-ginned cotton. In pursuance of this contract, the accused delivered 260 "dokras" largely composed of cotton-seed, kapas and rubbish, carefully packed into the middle of the dokras, while all around the sides was placed good ginned cotton. The admixture of inferior stuff was found in all the "dokras", and it varied from 6 to 15 per cent against the quantity of ½ or 1½ which might be expected ordinarily to be found in dokras. It was held, that the accused was guilty of the offence of cheating under section 420 of the Penal Code.

(*2*) Of course, the general rule is[2] that a mere breach of contract cannot give rise to a criminal prosecution. The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time of the alleged inducement, which may be judged by subsequent acts; but the subsequent act is not the sole criterion of this intention[3]. Where there is *no clear and conclusive* evidence of the criminal intention of the accused at the time the offence is said to have been committed *and where the party said to be aggrieved has an alternative remedy in a civil court, the matter should not be allowed to be fought in the criminal courts*[3].

(*3*) As has been held[4], the representation can be implied from conduct[5].

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[1] *Emp.* v. *Kanji Shivaji* (1912), 14 Bom. L.R. 137, 14 Indian cases 669 (Chandavarkar and Batchelor JJ).

[2] *Sheosagar* v. *Emp.*, (1936) 37 Cr. L.J. 38, (Patna High Court) (Fazl. Ali J.) (Money taken for arranging marriage).

[3] See A.I.R. 1959 Tripura 38.

[4] *Khoda Bu.* v. *Bakeya Mundari*, I.L.R. 32 Ca. 941 947 (Pargiter and Woodroffe JJ.).

[5] *Cf.* the facts in *M.A. Kelesk* v. *Emp.* A.I.R. 1927 Mad. 544.

APPENDIX 25

Some Provisions of Hindu Law regarding high prices and adulteration

Provisions penalising adulteration and high prices were known to ancient Hindu law-givers. By way of example one may refer to certain texts of "Yajnavalkya[1]"—

False weights

He who abstracts one-eighth share (of an article sold) by a (false) measure or balance, shall be fined two hundred (panas). Where a greater or lower (share is abstracted), a proportionately (higher or lower fine should be imposed).

Adulteration

He who adulterates with inferior (articles) vendible medicines, oils, salt, perfumes, corn, coarse sugar and the like, shall be made to pay sixteen panas.

When (by some operation) inferior earth, hide, gem, yarn, iron, wood, bark, or cloth is made (to appear to be of) a superior kind, the fine is eight-fold of the (commodity) to be sold.

Palming off

He who pledges or sells a sealed casket (fraudulently) substituted (for a superior casket shewn) or the counterfeit of a natural vessel shall be fined (in the following manner).

"(When the value of the thing palmed on the buyer, or a pledge is) less than a pana, the fine is fifty (panas) (when) a pana one hundred (panas), (when) two panas, two hundred (panas) when the value is higher, (the fine is) higher.

Prices

For those knowing whether (the price set by them) is higher or lower (than the maximum rates fixed by the kind) unite in fixing a price too heavy for *Karus* (workmen) and Siplins (artisans) the fine is the highest.

For those traders who conspire to obstruct (the sale of a commodity by demanding it), or selling it at an improper price, the highest fine is laid down.

The sale or purchase (of articles) should every day be made at the rates fixed by the king, the profit derived in this manner is declared (to be) propitious for traders.

[1]Sen-Gupta, Evolution of Ancient Indian Law, (1953), page 316.

APPENDIX 25 (concld.)

A trader shall make five per cent as profit on commodities of the same country, and ten (per cent) on the foreign, if the purchase and sale take place immediately, (*i.e.* on the same day as that of the purchase).

The rates should be so fixed (by the king) as to be advantageous both to the buyer and the seller after adding to be (cost) value of the commodity, the expenses incurred."

APPENDIX 26

FOOD ADULTERATION LAWS OF SOME COUNTRIES

A list of the laws relating to adulteration of food (food legislation) in some of the countries of the world is given below:—

Australia

In Australia each State has its own Pure Food Act. But uniformity is secured after the creation of the National Health and Medical Research Council which makes recommendations for uniformity in legislation[2].

Burma

Food and Drugs Act, 1928 is the main law.

Canada

The present law in Canada regarding pure food is contained in the Food and Drugs Act, 1953, which is a federal statute. The Department of National Health and Welfare is responsible for the administration of the Act through the Food and Drugs Directorate. The Directorate, besides its headquarters establishment, maintains district and regional offices. High priority is given to activities involving a hazard to health; second priority is given to hygienic violations relating to filth, decomposition of foods etc. and third priority to mere frauds and other economic violations.

The validity of the Act as falling under "criminal law" has been upheld[3].

Ceylon

Food and Drugs Act, 1949 is the main law.

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[1]Note prepared mainly on the basis of information contained in (a) Food and Agriculture Organization (United Nations) pamphlets relating to "Food Additive Control" in Canada Denmark, Germany, U.K. and France, and (b) in the Report of the F.A.O. Regional Seminar on Food Legislation for Asia and Far East (27th August to 3rd September, 1962), F.A.O. Report No. 1582 (Rome 1962).

[2]See "Pure Food and Pure Food Legislation"—edited by Amos (Butterworth).

[3]Standard Sausage Co. v. Lee, (1934) 1 D.L.R. 705.

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Denmark

As far back as 22nd October, 1701, an Order concerning the Administration of the Police directed that the Commissioner of Police should not permit the offering for sale of food or beverages that were tainted or unwholesome or might cause sickness. Later Ordinances and Regulations covered certain aspects of purity of food. On 1st May, 1860, a Milk Control Order was issued. First law on the examination of food was passed on 9th April, 1891. In 1910 an Act for the examination of food was passed. Subsequent amendments dealt with certain aspects of food purity.

Enforcement of food laws is by the local health authorities, the local public health medical officer, the police, the customs, the National Veterinary Service etc., and the National Control Board for Dairy Products. The National Health Service deals with the subject. A National Food Institute was established under an Act of 5th June, 1959. The Institute is to look after the work of the various laboratories and also have a Central Laboratory for food control and an independent labouratory for food toxicological research.

England

It is said that England was the first country in the English speaking world to have a separate law for Adulteration of Food in 1860[1]. In fact, in the 15th Century, steps to deal with adulteration of food were initiated not by the Government but by the important Merchant companies of London who managed to obtain official regulations or legislation to check frauds in the particular articles handled by them. In the 18th Century, the excise authorities took interest in the matter and legislation regarding purity of food was enacted in the interest of the revenue. It was the extensive application of the microscope to the examination of food by A. H. Hassall that gave a new turn to the subject. Parliament appointed a Commission to consider the question of adulteration and its report in 1860 led to an Act for the Prevention of Adulteration of articles of Food and Drugs in 1860. The Act of 1875 (Sale of Food and Drugs Act, 1875) made compulsory the appointment of public analysts by local authorities. Thereafter a number of enactments dealing with special articles of food followed. The main Act now in force is the Food and Drugs Act, 1955 (for England), and it consolidates almost all the previous enactments.

In England, the Food and Drugs Act, 1955 (4 Eliz 2 c. 16) is the main Act dealing with adulteration of food and

[1]"Pure Food and Pure Food Legislation"—edited by Amos (Buterworth) (Papers of the 1960 celebrations for centenary of the Act).

APPENDIX 26 (contd.)

drugs. The general penal sections are sections 106 and 107 in the 1955 Act. There are certain special punishments provided for in sections 5(3), 18(4), 22(1), 23(1). (3), 27(1), 52(4), 55(1), 57(1), (3), 59, 60, 69(2), 100(5) and 105(1), (3). Certain additional punishments are provided for in sections 8(4), 12(2), 68(3), and Schedule II, paragraph 5.

(There are separate Acts for Scotland etc.)

Duties of administering and enforcing the Act are entrusted to the local "Food and Drugs authorities" *i.e.* the Common Council of the City of London, the Councils of many larger boroughs and urban districts and the country councils. Each food and drug authority has to appoint a duly qualified public analyst with the approval of the appropriate Minister. Sampling officers are also appointed by these authorities. In matters of general interests of consumers, the Minister of Agriculture and Food may also direct a departmental officer to procure samples. Samples are divided into three parts, one part being given to the seller, the other part being given to the Public Analyst and the third retained for possible future comparison. The Public Analyst analyses with all due expedition the samples, and gives to the sampling officers a certificate showing the result of the analysis. The seller is entitled to a copy of the certificate on nominal fee. A certificate showing that the sample does not comply with the law does not necessarily lead to a prosecution, as the public health inspector (under whose instructions the sampling officer usually acts) may ask the seller or manufacturer for observations on an adverse report, and the explanation offered may be considered before a prosecution is undertaken.

The decision to take proceedings usually lies with the public health committee or the medical officer of health of the local authority. On the request of a party, the court may cause the retained part of the sample to be sent to the Government Chemist for analysis and his certificate can be used in evidence.

Besides the Act of 1955, the Therapeutic Substances Act, 1956 is also of interest.

France

The basic law in France is the law of 1st August, 1905 for the prevention of fraudulent practices. The purpose of this law is to check frauds perpetrated in connection with *all merchandise*, i.e., all deception or attempt at deception intended to mislead the buyer as to essentials. It also provides for checking adulteration of foods, drinks and drugs etc. As early as the year 1268, a Code was drawn up by the trade guilds of Paris containing regulations applicable to producers and dealers of foods. The

APPENDIX 26 (contd.)

Code was approved by Provost Etiennee Boileau. Addition of unauthorised seeds injurious to the human body to spices from the East was also prohibited. Fines, confiscation, whipping, pillorying of a vendor of rotten eggs and of the seller of adulterated butter was ordered. A person who sold watered milk was to have a funnel placed in his throat, and the watered milk was to be poured down until a doctor or a barber declared that the man could not swallow any more without danger.

Articles 423, 318 and 475 of the French Penal Code of 1810 contain somewhat scanty provisions regarding adulteration. But, towards the middle of 19th Century, adulteration and falsification of food became increasingly frequent, as fraudulent operators learnt to exploit skilfully the progress made by chemistry to cover their unlawful activities. Numerous international congresses on public health, medicine etc. discussed the question of adulteration of foodstuffs. Ultimately in 1905, it was decided to intensify and centralise the controls of foods, which had been left for long to the mercies of insufficiently skilled municipal officials.

Enforcement of the law is mainly under the charge of the Technical Activities Division of the Ministry of Agriculture whose Inspectors carry out inspection. There are specified contingents whose jurisdiction is nation-wide. They exercise special and very strict control over certain products, such as fruits and vegetables for export, wines, flour, textiles etc. Laboratory service is extensive, consisting of three Government laboratories and about 100 other approved laboratories, the latter doing part-time work for prevention of fraud. There are specialised laboratories for dairy products, wines, fertilizers, seeds, etc. The inspection branch has 270 officials and 110 agents, and about 200 scientific personnel. In addition, in Paris, the Police Department has the Inspection Corps (70 persons) and there is the Paris Municipal Laboratory (25 persons). Control of medicine and drugs is exercised by the pharmacy inspectors; military supplies are checked by special staff; wholesomeness of water is checked by departmental inspectors of public health and so on.

The perfects are responsible for transmitting to the Public Prosecutor files containing reports of violations and official laboratory results indicating frauds, adulteration, or a breach of regulation. The Public Prosecutor may—

(*i*) file the matter, if there is no offence; or

(*ii*) place it before the court, if the evidence is sufficient, or

(*iii*) send it to the Examining Magistrate if further information is necessary or if the party concerned claims the right to submit expert counter-evidence.

APPENDIX 26 (contd.)

Fraud and adulteration are punishable with imprisonment (three months to 2 years) or by fines. Where adulteration is injurious to health, imprisonment is mandatory.

Germany

In the Federal Republic of Germany, the Food Act of 1927 and the Colour Act of 1887 are the two main laws; the former has been extensively amended by the Food Act of 21st December, 1958. Various rules (called Ordinances) under the two Acts deal with matters of detail. Apart from the Federal Health Department, the German Research Association (through its Food Additive Commissions) and the Federation of Food Law and Food Science do useful work in preparation of relevant legislation. The German Research Association has done considerable work on Food colouring and food preservatives. The Federation for Food Law and Food Science consists of members of major food producing and food trading corporations, and holds a "mediatory" position between the "stringent demands" of the Government and the interests of the food industry.

The Amendment of 1955, section 4(b), sub-section 4 specifically prohibits sale of foods in which there are residues of insecticide, pesticides, herbicides etc. exceeding the maximum permissible amount.

There are institutes financed by the Federal Ministry of Food which analyse food and determine food additives. There are such separate institutes for grain, fish, food products, dairy fat, etc.

Hongkong

Public Health and Urban Service Ordinance, 1960 is the main law.

India

In addition to the Prevention of Food Adulteration Act, 1954, reference may be made to the Agricultural Products (Grading and Marketing) Act, 1937. The Fruit Products Order of 1955 and Vegetable Oil Products Control Order also regulate the concerned products.

Japan

Main laws are Farm Products Inspection Law, Agricultural Standard Law and Export Inspection Law; Law for the Control of Food and other Articles, 1900; Food Sanitation Law, 1947. Food legislation is administered by the Ministry of Health and Welfare. Fraudulent sale in any commodity, including foodstuffs, is dealt with by the Fair Trade Commission under the Anti-Monopoly Law, 1947.

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Korea

Food Sanitation Law (20th January, 1962), is the main law.

Malaya

Sale of Food and Drugs Ordinance, 1952 is the main law.

APPENDIX 27

BASIC PRINCIPLES FOR PURE FOOD LAWS

The two main objectives of food legislation are—

(*i*) to check adulteration; and

(*ii*) to prevent frauds.

In the minds of the public, "pure food" means food that is wholesome and free from anything that is in any way harmful to health and free from the addition or substraction of anything which might impair wholesomeness, and present to the public in a forthright and factual manner[1]. The consumer has to be safeguarded against dangers to his health as well as against commercial frauds.

Foods are by their very nature products of many different varieties, composition and degrees of purity, and are subject, with respect to production, transportation and distribution, to many different nutritional, hygienic and labelling requirements. Therefore, the basic law can only lay down broad general principles, while regulations must contain detailed provisions governing different categories of products[2].

In modern times, the minimum standards below which food should not be sold have also been emphasised, as these grade standards are important in featuring the produce of a country and thus gaining a reputation for it.

Thus pure food laws deal with (*i*) health, (*ii*) frauds, (*iii*) marketing.

At the Regional Seminar on Food Legislation[3], the important requirements for facilitating enforcement were thus described:—

"(*a*) definitions of such key words as food, label, advertisement, adulteration, sale, package, misbranding, warranty and unsanitary conditions, etc., rather than rely on the common or dictionary meaning of such words;

(*b*) procedures for sampling and analyses;

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[1]F.A.O. Regional Seminar on Food etc. Report, (1962), page 7.

[2]*Ibid*, page 7.

[3]F.A.O. Regional Seminar on Food etc. Report, (1962), page 8.

APPENDIX 27 (contd.)

(c) powers of inspection and the procedures to be followed;

(d) penalties;

(e) warranties and guarantees;

(f) prohibition of the importation of articles not complying with the law.".

The Seminar recommended [1] that each country should have same law on the basis of basic principles given in its Report, that maximum and minimum penalties be prescribed depending on the nature and gravity of the offence; that detailed standards for new, traditional and processed foods may be prescribed; and that each Government should set up a *Statutory Co-ordinating Committee on Food Control*, consisting of representatives of the various Government Departments responsible for the many aspects of food legislation (Agriculture, Industry, Trade, Health etc.) and of trade and manufacturing interests. The Seminar also stressed the need for immediate steps in establishing appropriate training programmes for the field staff, laboratory technicians and other personnel.

As regards enforcement, its recommendations may be quoted in detail[2]:—

"6. Governments should pay attention to the enforcement of food legislation in places where food is produced or manufactured in order to ensure at the source that food is not exposed to health hazards or subjected to adulteration or fraud.

7. Governments should take steps at an early date to set up or strengthen their marketing organizations, taking the necessary legislative action so as to be able to progressively grade and quality-mark according to well-defined standards, all important food articles produced or manufactured in the country for sale or distribution, and thus facilitate the enforcement of food laws and make them effective.

8. In view of the important role of the consumers and consumers' association in the enforcement of food legislation, Governments provide for the education of consumers and of those involved in the handling of foods, and assist consumers' associations in becoming acquainted with the food legislation and control measures.

9. Governments keep the Legislation Research Branch, F.A.O. Headquarters, Rome, Italy, regularly informed on any new food legislation enacted or rules framed thereunder or any amendments to existing laws or regulations and supply, when possible, English or French translations of the texts. This would enable the F.A.O. to act as the

[1] F.A.O. Regional Seminar on Food, etc, Report, (1962), page 17.

[2] F.A.O. Regional Siminar on Food, etc., Report, (1962), page 18, paras. 6—9.

APPENDIX 27 (contd.)

Central body for the exchange of information on food legislation between the countries in the Region with the aid of promoting further improvement and harmonisation of their food legislation.".

The variety and complexity of food legislation justify these observations:—

> "Sound food legislation must depend upon knowledge in several different fields.".

Of these fields, three are of outstanding importance—the agricultural and veterinary sciences concerned with raw materials, the chemical sciences concerned with preparatory measures, and the biological sciences concerned with the effects of food.[1]

It should be realised, that "the price of pure food is eternal vigilance on the part of the Food Chemists in industry and the Public Analyst".[2]

APPENDIX 28

PROVISIONS IN TASMANIA (AUSTRALIA) REGARDING ANTI-SOCIAL, ETC., OFFENCES

1	2
Evasion and avoidance of taxes lawfully imposed.	(1) Stamp Duties Act, 1931 Section 23, sub-section (5) (*d*), (*e*) and (*f*).
	(2) Deceased Persons' Estates Duties Act, 1931. Section 38.
	(3) Land and Income Taxation Act, 1910. Sections 195, 197 and 198 (Extracts attached).
Adulteration of foodstuffs and drugs.	Public Health Act, 1962. Sections 90 to 98, and 100 (Not copied).
Theft, etc.	Sections 226 to 234 Criminal Code Act 1924.
Misuse of their position by public servants in making of contracts and disposal of public property, issue of licences and permits and similar other matters.	Criminal Code Act, 1924. Sections 83 to 87, 100, 115, 265, 266 and 297. (Extracts attached).

[1]A.C. Frazer in "Pure Food and Pure Food Laws" (Edited by Amos)

[2]J.H. Hamence in "Pure Food and Pure Food Laws" (Edited by

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Copy of sections 195, 197 *and* 198 *from the Land and Income Taxation Act,* 1910.

"195. (*1*) Any person who— Offences.

(*a*) fails or neglects to duly furnish any return or information, or to comply with any requirement of the Commissioner as and when required by this Act, or by the Commissioner;

(*b*) without just cause shown by him, refuses or neglects to duly attend and give evidence when required by the Commissioner or any officer duly authorised by him, or to truly and fully answer any questions put to him, or to produce any book or papers required of him by the Commissioner or any such officer;

(*c*) makes or delivers a return which is false in any particular, or makes any false answer, whether verbally or in writing; or

(*d*) aids or assists any other person in any manner whatsoever to commit an offence against paragraph (*c*) of this sub-section,

shall be guilty of an offence.

Penalty.—Not less than two pounds nor more than one hundred pounds.

(*2*) A prosecution in respect of an offence against paragraphs (*a*), (*c*), or (*d*) of sub-section (*1*) of this section may be commenced at any time.

(*3*) Any person who, after conviction for an offence against this section, continues to fail to comply with the requirements of this Act, or of the Commissioner, in respect of which he was convicted, shall be guilty of an offence and punishable as provided in section one hundred and ninety-eight.

(*4*) It shall be a defence to a prosecution for an offence against paragraph (*c*) of sub-section (*1*) of this section if the defendant proves that the false particulars were given, or the false statement was made, through ignorance or inadvertence.

197. If, in any prosecution under paragraph (*c*) of sub-section (*1*) of section 195, it is proved that the tax-payer has wilfully made or delivered a false return with intent to defraud, the amount by which his actual income for the year in respect of which such return was made, exceeds the amount of income shown in such return, shall be deemed to be income tax payable by the tax-payer, and may be recovered accordingly. Under-statement of income.

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Avoiding taxation.

198. Any person who, by any wilful act, default, or neglect, or by any fraud, art, or contrivance whatever, *avoids, or attempts to avoid,* assessment or taxation, shall be guilty of an offence.

Penalty.—Not less than fifty pounds nor more than five hundred pounds, and in addition an amount not exceeding double the amount of tax payment whereof he has avoided or attempted to avoid."

Copy of sections 83 to 87, 110, 115, 265, 266 and 297 of the Criminal Code Act, 1924.

Corruption of public officers.

"83. Any person who—

(*a*) being a public officer, corruptly solicits, receives, or obtains, or agrees to receive or obtain, any property or benefit of any kind for himself or any other person on account of anything done or omitted, or to be done or omitted, by him in or about the discharge of the duties of his office; or

(*b*) corruptly gives, confers, or procures, or promises or offers to give, confer, or procure, or attempt to procure, to, upon, or for any public officer, or any other person, any property or benefit of any kind on account of anything done or omitted, or to be done or omitted, by such officer in or about the discharge of the duties of his office,

is guilty of a crime.

Charge:—

Under (*a*): Official corruption.

Under (*b*): Bribery of a public officer.

Tasmania

Extortion by public officer : Oppression.

84. (*1*) Any public officer who, under colour of office and otherwise than in good faith, demands, takes, or accepts from any person for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, is guilty of a crime.

Charge:—Extortion as a public officer.

(*2*) Any public officer who, in the exercise or under colour of exercising his office, wilfully and unlawfully inflicts upon any person any bodily harm, imprisonment, or other injury is guilty of a crime.

Charge:—Oppression.

Public officers Interested n contract.

85. (*1*) Any public officer who knowingly holds, directly or indirectly, any personal interest in any contract made by or on behalf of the Government of this State concerning any public matter is guilty of a crime.

APPENDIX 28 (contd.)

Charge:- Being interested in a contract as a public officer.

(2) A person is not deemed to be interested in any such contract as aforesaid because he is a shareholder in a company of more than twenty members which is a party thereto, unless he is a director of such company.

Corruption of valuator.

86. Any person appointed to act as a valuator or arbitrator to determine the value of any land, or of any injury done to any property who—

(*a*) having to his knowledge any substantial interest in such property acts as such valuator or arbitrator without disclosing the fact that he holds such interest to the person appointing him; or

(*b*) acts corruptly or dishonestly as such valuator or arbitrator,

is guilty of a crime.

Charge:—Dishonest dealing as a valuator or as an arbitrator.

False statutory certificates.

87. Where by any statute any person is authorised or required to certify to any fact, any such person who gives a certificate which to his knowledge is false in any material particular is guilty of a crime.

Charge:—Giving a false certificate.

Disclosure of secrets.

110. Any public officer who discloses (except to some person to whom he is authorised to publish or communicate the same) any fact which comes to his possession, by virtue of his office and which it is his duty to keep secret, is guilty of a crime.

Charge:—Disclosing official secrets.

Omission by public officer to perform duty.

115. (1) Any public officer who wilfully and without lawful excuse omits to do any act which it is his duty to do as such officer is guilty of a crime.

(2) No person shall be prosecuted under this section without the consent in writing of the Attorney-General.

Charge:—Omitting to perform duty as a public officer.

False accounting by public officer

265. Any public officer charged with the receipt, custody, or management of any part of the public revenue or property who knowingly furnishes any false statement or return of any money or property received by him or entrusted to his care, or of any balance of money in his possession or under his control, is guilty of a crime.

Charge:—Falsely accounting as a public officer.

Secret communications.

266. (*1*) Any person who—

(*a*) corruptly gives or agrees to give, or offers to an agent, or to any other person on his behalf; or

(*b*) being an agent, corruptly solicits, receives, obtains, or agrees to accept for himself or any person other than his principal,

any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to the same, is guilty of a crime.

Charge:—Corruption in relation to business.

(*2*) Any person who knowingly gives to an agent, or any agent who knowingly receives or uses with intent to deceive his principal, any receipt, account, or other document in respect of which his principal is interested or which relates to any dealing, transaction, or matter in which his principal is interested, and which contains any statement which is false or erroneous, or defective in any material particular, is guilty of a crime.

Charge:—Corruptly using a false document.

(*3*) For the purposes of this section—

(*a*) "agent" includes any person employed by or acting for another, and any person serving under the Crown or under any corporation or public body;

(*b*) "consideration" means any kind of valuable consideration;

(*c*) "principal" includes any employer.

(*4*) In any proceedings under this section, where it is proved that any consideration has been solicited or received by an agent from, or given or offered to an agent by, any person having business relations with the principal, the burden of proving that such consideration was not solicited, received, given, or offered in contravention of the provisions of this section shall be on the accused. In any such proceedings as aforesaid it shall be a defence to prove that the consideration was solicited, received, given, or offered with the principal's knowledge, and that he was aware of all facts material to the transaction.

Conspiracy

297. (*1*) Any person who conspires with another—

(*a*) to kill any person, whether a subject of His Majesty or not, and whether he is in this State or elsewhere, under circumstances which, if he were killed in this State, would constitute murder;

APPENDIX 28 (concld.)

(*b*) to obstruct, prevent, pervert, or defeat the due course of justice, or the administration of the law, whether such purpose is to be effected in this State or elsewhere;

(*c*) to commit any crime;

(*d*) *to cheat or defraud the public, or any particular person, or class of persons;*

(*e*) to extort, by any means, any property whatever from any person;

(*f*) to inflict by any unlawful means any injury or harm upon the public, or any particular person or class of persons;

(*g*) to facilitate the seduction of a woman;

(*h*) to do any act involving, and known to be likely to involve, public mischief; or

(*i*) to do any act without lawful justification or excuse with intent thereby to injure any person,

is guilty of a crime.

Charge:—Conspiracy.

(2) A husband and wife are not criminally responsible for any conspiracy between themselves only.

(3) Nothing in this section shall affect the provisions of the Trades Unions Act, 1889, or of the Conspiracy and Protection of Property Act, 1889."

APPENDIX 29

CANADIAN LAWS AS TO ANTI-SOCIAL, ETC. OFFENCES

(*1*) *Economic Crimes*

(*i*) Revised Statutes of Canada, 1952, Ch. 314, The Combines Investigation Act.

(*2*) *Evasion of Taxes*

(*i*) Revised Statutes of Canada, 1952, Ch. 58, The Customs Act.

(*ii*) Revised Statutes of Canada, 1952, Ch. 60, The Customs Tariff Act.

(*iii*) Revised Statutes of Canada, 1952, Ch. 99, The Excise Act.

(*iv*) Revised Statutes of Canada, 1952, Ch. 148, Income-tax Act.

(*3*) *Misuse of position by public servants*

(*i*) Canadian Criminal Code—Sections 99—103. (Extracts attached)

APPENDIX 29 (contd.)

(4) *Delivery of sub-standard goods*

(*i*) Canadian Criminal Code—section 2, sub-section (36), sections 360—363. (extracts attached)

(5) *Profiteering etc.*

Not cognizable as offences in Canada.

(6) *Adulteration of food etc.*

(*i*) Revised Statutes of Canada, 1952, Ch. 123, Food and Drugs Act.

(*ii*) Revised Statutes of Canada, 1952, Ch. 126, Fruit, Vegetables and Honey Act.

(*iii*) Revised Statutes of Canada, 1952, Ch. 177, The Meat and Canned Goods Act.

(These Statutes deal with the processing, packaging, inspection and control of sanitary conditions as well as purity of the products concerned).

(7) *Theft, etc.*

Canadian Criminal Code—section 269, 280, 283.

(8) *Trafficking in licences, etc.*

No specific provision exists except general provisions as to misuse of position by public servants.

EXTRACTS FROM CANADIAN CRIMINAL CODE, 1955

Sections 99—103

99. In this Part,

(*a*) "Evidence" means an assertion of fact, opinion, belief or knowledge whether material or not and whether admissible or not;

(*b*) "Government" means

(*i*) the Government of Canada,

(*ii*) the Government of a province, or

(*iii*) Her Majesty in right of Canada or in right of a province;

(*c*) "Judicial proceeding" means a proceeding

(*i*) in or under the authority of a court of justice or before a grand jury,

(*ii*) before the Senate or House of Commons of Canada or a Committee of the Senate or House of Commons, or before a legislative council, legislative assembly or house of assembly or a committee thereof that is authorized by law to administer an oath,

(*iii*) before a court, judge, justice, magistrate or coroner,

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(*iv*) before an arbitrator or umpire, or a person or body of persons authorised by law to make an inquiry and take evidence therein under oath, or

(*v*) before a tribunal by which a legal right or legal liability may be established, whether or not the proceeding is invalid for want of jurisdiction or for any other reason;

(*d*) "Office" includes

(*i*) an office or appointment under the government,

(*ii*) a civil or military commission, and

(*iii*) a position or employment in a public department;

(*e*) "Official" means a person who

(*i*) holds an office, or

(*ii*) is appointed to discharge a public duty; and

(*f*) "Witness" means a person who gives evidence orally under oath or by affidavit in a judicial proceeding, whether or not he is competent to be a witness, and includes a child of tender years who gives evidence but does not give it under oath, because, in the opinion of the person presiding, the child does not understand the nature of an oath.

100. (*1*) *Bribery of Judicial Officers, etc.*—Every one who

(*a*) being the holder of a judicial office, or being a member of the Parliament of Canada or of a legislature, corruptly

(*i*) accepts or obtains,

(*ii*) agrees to accept, or

(*iii*) attempts to obtain, any money, valuable consideration, office, place or employment for himself or another person in respect of anything done or omitted or to be done or omitted by him in his official capacity; or

(*b*) gives or offers corruptly to a person who holds a judicial office, or is a member of the Parliament of Canada or of a legislature, any money, valuable consideration, office, place or employment in respect of anything done or omitted or to be done or omitted by him in his official capacity for himself or another person,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(2) *Consent of Attorney General*—No proceedings against a person who holds a judicial office shall be instituted under this section without the consent in writing of the Attorney General of Canada.

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101. Every one who

(*a*) *Bribery of Officers*—being a justice, police commissioner, peace officer, public officer, or officer of a juvenile court, or being employed in the administration of criminal law, corruptly

(*i*) accepts or obtains,

(*ii*) agrees to accept, or

(*iii*) attempts to obtain, for himself or any other person any money, valuable consideration, office, place or employment with intent

(*iv*) to interfere with the administration of justice,

(*v*) to procure or facilitate the commission of an offence, or

(*vi*) to protect from detection or punishment a person who has committed or who intends to commit an offence; or

(*b*) *Idem*—gives or offers, corruptly, to a person mentioned in paragraph (*a*) any money, valuable consideration, office, place or employment with intent that the person should do anything mentioned in sub-paragraph (*iv*), (*v*) or (*vi*) of paragraph (*a*),

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

102. (*1*) *Frauds upon the Government*—Every one commits an offence who

(*a*) *Offer or gift to influence official*—directly or indirectly

(*i*) gives, offers, or agrees to give or offer to an official or to any member of his family, or to any one for the benefit of an official, or

(*ii*) being an official, demands, accepts or offers or agrees to accept from any person for himself or another person, a loan, reward, advantage or benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with

(*iii*) the transaction of business with or any matter of business relating to the government, or

(*iv*) a claim against Her Majesty or any benefit that Her Majesty is authorised or is entitled to bestow, whether or not, in fact, the official is able to co-operate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

(*b*) *Giving reward or commission to official without consent*—having dealings of any kind with the

government, pays a commission or reward to or confers an advantage or benefit of any kind upon an employee or official of the government with which he deals, or to any member of his family, or to any one for the benefit of the employee or official, with respect to those dealings, unless he has the consent in writing of the head of the branch of government with which he deals, the proof of which lies upon him;

(*c*) *Acceptance of Commission or Gift without consent*—being an official or employee of the government, demands, accepts or offers or agrees to accept from a person who has dealings with the government a commission, reward, advantage or benefit of any kind directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the head of the branch of government that employs him or of which he is an official, the proof of which lies upon him;

(*d*) *Compensation for procuring settlement of claim, etc.*—having or pretending to have influence with the government or with a minister of the government or an official, demands, accepts or offers or agrees to accept for himself or another person a reward, advantage or benefit of any kind as consideration for co-operation, assistance, exercise of influence or an act or omission in connection with

(*i*) anything mentioned in sub-paragraph (*iii*) or (*iv*) of paragraph (*a*),

(*ii*) the appointment of any person, including himself, to an office; or

(*e*) *Offer of reward for appointment*—offers, gives or agrees to offer or give to a minister of the government or an official a reward, advantage or benefit of any kind as consideration for co-operation, assistance, exercise of influence or an act or omission in connection with

(*i*) anything mentioned in sub-paragraph (*iii*) or (*iv*) of paragraph (*a*), or

(*ii*) the appointment of any person, including himself, to an office; or

(*f*) *Reward for withdrawal of tender*—having made a tender to obtain a contract with the government

(*i*) gives, offers or agrees to give to another person who has made a tender, or to a member of his family, or to another person for the benefit of that person, a reward, advantage or benefit of any kind as consideration for the withdrawal of the tender of that person, or

APPENDIX 29 (contd.)

(*ii*) demands, accepts or agrees to accept from another person who has made a tender a reward, advantage or benefit of any kind as consideration for the withdrawal of his tender.

(2) *Contractor subscribing to election fund.*—Every one commits an offence who, in order to obtain or retain a contract with the government or as a term of any such contract, whether express or implied, directly or indirectly subscribes, gives, or agrees to subscribe or give, to any person any valuable consideration

(*a*) for the purpose of promoting the election of a candidate or a class or party of candidates to the Parliament of Canada or legislature, or

(*b*) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Parliament of Canada or a legislature.

(3) *Punishment.*—Every one who commits an offence under this section is guilty of an indictable offence and is liable to imprisonment for five years.

103. *Breach of Trust by Public Officer.*—Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and is liable to imprisonment for five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

EXTRACTS FROM CANADIAN CRIMINAL CODE

Section 2(36) and sections 360—363.

2. (*36*) "*Public stores*" includes any movable property that is under the care, supervision, administration or control of a public department or of any person in the service of a public department;

360. (*1*) *Applying or removing marks without authority.*—Every one who,

(*a*) without lawful authority, the proof of which lies upon him, applies a distinguishing mark to any thing, or

(*b*) with intent to conceal the property of Her Majesty in public stores, removes, destroys or obliterates, in whole or in part, a distinguishing mark,

is guilty of an indictable offence and is liable to imprisonment for two years.

(2) *Unlawful transactions in public stores.*—Every one who, without lawful authority, the proof of which lies upon him, receives, possesses, keeps, sells or delivers public stores that he knows bear a distinguishing mark is guilty of

(*a*) an indictable offence and is liable to imprisonment for two years, or

(*b*) an offence punishable on summary conviction.

(3) "*Distinguishing mark*".—For the purposes of this section, "distinguishing mark" means a distinguishing mark that is appropriated for use on public stores pursuant to section 359.

361. (*1*) *Selling defective stores to Her Majesty.*—Every one who knowingly sells or delivers defective stores to Her Majesty or commits fraud in connection with the sale, lease or delivery of stores to Her Majesty or the manufacture of stores for Her Majesty is guilty of an indictable offence and is liable to imprisonment for fourteen years.

(*2*) *Offences by officers and employees of corporations.*—Every one who being a director, officer, agent or employee of a corporation that commits, by fraud, an offence under sub-section (*1*),

(*a*) knowingly takes part in the fraud, or

(*b*) knows or has reason to suspect that the fraud is being committed or has been or is about to be committed and does not inform the responsible government or a department thereof, of Her Majesty,

is guilty of an indictable offence and is liable to imprisonment for fourteen years.

362. *Unlawful use of military uniforms or certificates.*—Every one who without lawful authority, the proof of which lies upon him,

(*a*) wears a uniform of the Canadian Forces or any other naval, army or air force or a uniform that is so similar to the uniform of any of those forces that it is likely to be mistaken therefor,

(*b*) wears a distinctive mark relating to wounds received or service performed in war, or a military medal, ribbon, badge, chevron or any decoration or order that is awarded for war services, or any imitation thereof, or any mark or device or thing that is likely to be mistaken for any such mark, medal, ribbon, badge, chevron, decoration or order,

(*c*) has in his possession a certificate of discharge, certificate of release, statement of service or identity card from the Canadian Forces or any other naval, army or air force that has not been issued to and does not belong to him, or

(*d*) has in his possession a commission or warrant or a certificate of discharge, certificate of release, statement of service or identity card issued to an officer or

person in or who has been in the Canadian Forces or any other naval, army or air force, that contains any alteration that is not verified by the initials of the officer thereto lawfully authorised,

is guilty of an offence punishable on summary conviction.

363. (*1*) *Military stores.*—Every one who buys, receives or detains from a member of the Canadian Forces or a deserter or absentee without leave from those forces any military stores that are owned by Her Majesty or for which the member, deserter or absentee without leave is accountable to Her Majesty is guilty of

(*a*) an indictable offence and is liable to imprisonment for five years, or

(*b*) an offence punishable on summary conviction.

(*2*) *Exception.*—No person shall be convicted of an offence under this section where he establishes that he did not know and had no reason to suspect that the military stores in respect of which the offence was committed were owned by Her Majesty or were military stores for which the member, deserter or absentee without leave was accountable to Her Majesty.

APPENDIX 30

CONSPIRACY TO COMMIT PUBLIC MISCHIEF—ENGLISH LAW.

1. A brief discussion of the offence of conspiracy as known to English law appears to be useful, first, because it has been used often to punish a conspiracy to defraud, and secondly, because its wide scope is illustrated by certain recent decisions[1].

2. The following statement in one text-book[2] seems to sum up the law neatly:--

"An agreement by two or more persons:—

(*1*) To commit a crime; or

(*2*) Subject to possible qualifications mentioned in the explanation[3], to commit any other unlawful act; or

(*3*) To do any act which is (*a*) immoral or (*b*) tends to the public mischief;

is a common law misdemeanour punishable with a fine and imprisonment.".

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[1]See Shaw *v.* D.P.P. (1961) 2 A.E.R. 446 (1961) 2 W.L.R. 897 (H.L.)

[2]Cross & Jones, Introduction to Criminal Law (1964), 297, article 90.

[3]The qualification stated is to the effect that the second head would, perhaps, apply only to torts involving the elements of fraud and of malice. Cross and Jones, Introduction to Criminal Law (1964), page 299.

APPENDIX 30 (contd.)

3. The offence covers not only a conspiracy to commit a breach of statute, but also an agreement to contravene a law, whether statute-made or otherwise[1-2].

4. That the offence has not become obsolete, will be shown by the charges of conspiracy framed in connection with the recent Great Train Robbery[3], and the charges of "conspiracy to pervert the course of justice" framed against Detective Sergeant Challenor[4] (later found to be insane and unfit to plead), and the case-law relating to conspiracy to commit summary offences[5].

5. Certain species of the offence of conspiracy in criminal law have become controversial[6]. Of these, the conspiracy "to corrupt the public morals" and to commit a public mischief is one[7].

The recent decision of the House of Lords[8-9] leaves no doubt that the law recognises such a conspiracy[10-11].

6. Some important instance of conspiracy to defraud[12] may be noted. Agreements to do the following things have been regarded as punishable as conspiracy to defraud—

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[1]See *R.* v. *Jacobs.* 1944 1 All Eng. Rep. 485; (1944) K.B. 417; 88 Solicitors' Journal, 188; and discussion thereof in *Babulal* v. *King Emp.*, A.IR. 1945 Nag. 218, 221 (Vivian Bose J.).

[2]See also *R.* v. *Sorsky* (1944) 2 All Eng. Rep. 333 (C.C.A.) and Halsbury, 3rd Edn., Vol. 10, page 311, para. 569 (middle).

[3]See *R.* v. *Field* (1964), 3 W.L.R. 605, 607, 608 (C.C.A.).

[4]*R.* v. *Pedrini*, (September, 1964), 7 Current Law, 366—a, Notes of recent cases (C.C.A.).

[5]See *R.* v. *Blamires Transport Services Ltd.* (1963) 3. A.E.R. 170; (1963) 3 W.L.R. 496 (C.C.A.).

[6]See the discussion in Glanville Williams, Criminal Law, The General Part (1961), Chapter 15.

[7]For earlier cases, see Stallybrass, 'Public Mischief' (1933) 49 L.Q.R 83, 191.

[8]*Shaw* v. *D.P.P.* (1961) 12 A.E.R. 466; (1961) 2 W. L.R. 897 (H.L) discussed exhaustively by Goodhard. "The Shaw case; the law and public morals" (1961) 77 Modern Law Review 560.

[9]See also C.C. Turpin, "Conspiracy to Corrupt Public Morals"(1961) Camb L.J. 144.

[10]Other cases relevant to this are—

(a) *R.* v. *Newland* (1933) 12 All Eng. Rep. 1067 (C.C.A.).

(b)*Board of Trade* v. *Owem* (1957), A.C. 602; (1957) 1 All Eng. Rep. 411 (H.L.) (Discusses history of the offence in detail).

[11]For earlier cases see Stallybrass "Public Mischief" (1933), 49 L.Q.R. 183, 191.

[12]e Halsbury, 3rd Edn., Vol. 10, page 834, footnote (u).

APPENDIX 30 (concld.)

(*i*) to raise the price of, public funds on a particular day by false rumours[1];

(*vi*) to make and publish a false balance-sheet, the shares of a company on the official list of stock exchange, in order to give a fictitious value to such share[2];

(*iii*) to induce a false belief among investors that there is a *bona fide* market for certain shares; by making sham sales, etc., at high prices[3].

(*iv*) to make and publish a false balance-sheet, misrepresenting the financial condition of company[4].

(*v*) to defraud a railway by obtaining non-transferable excursion tickets and selling them to other[5].

7. The common law offence of conspiracy can be used for frauds in relation to passports, it seems[6].

8. As to conspiracies and strikes, see discussion in the under-mentioned study[7].

9. In New Zealand[8-9], the offence of conspiracy has been narrowed down to specific classes of conspiracy.

An important feature of the crime of conspiracy to defraud is that it does not require "false pretence". As has been pointed out[10], the crime of obtaining by false pretences requires a false pretence, but conspiracy to defraud does not.

Another feature worth noting is that the obtaining of property or the execution of some kind of document, which is necessary for the offence obtaining by false pretences in English law, is not necessary for conspiracy[11]. Thus, where the buyer of a mare entered into plan with another person to deceive the seller into supposing that the mare was unsound (so that the seller agreed to accept less than the price originally fixed), the plan was held to be punishable as conspiracy to defraud the seller of the balance of price, though no *property* was obtained[12].

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[1] *R.* v. *De Berenger* (1814), 3 M & S. 67. See Turner and Armitage's Cases on Criminal Law (1964), page 161 (as explained in *R.* v. *Aspinal*, infra.).

[2] *R.* v. *Aspinall* (1876), 2 Q.B.D. 48, 50 (C. A.).

[3] *Scott* v. *Brown etc. Co.* (1892), 2 Q.B. 724 (C.A.).

[4] *R.* v. *Burch* (1865), 4 F. & F. 407.

[5] *R.* v. *Absolon & Clark* (1859), 1. F & F. 498.

[6] See Halsbury, 3rd Edn Vol. 7, page 265.

[7] K. W. Wdderburn, "Intimidation and the right to strike" (1964), 27 Modern Law Review 257, 267.

[8] See sections 155, 116, 257, 309, 310 (New Zealand) Crimes Act, 1961.

[9] See also sections 43, 134, 135, 412, 558 to 561, Criminal Code of Western Australia.

[10] See Glanville Williams, Criminal Law, The General Part (1961), page 690.

[11] *Cf.* Glanville Williams, Criminal Law, The General Part, pages 690, 691.

[12] *Carlisle* (1854), Dears, C.C. 337; 169 E.R 750. (C.C.R.). See Halsbury, 3rd Edn., Vol. 10, page 835.

APPENDIX 30 (concld.)

These two features also show that a conspiracy to defraud is criminal even if the act which it is agreed to do may not be criminal if done by only one person[1-2].

In a recent case[3], an agreement by a debtor (entering into a scheme of arrangement) to confer a fraudulent preference upon one creditor was regarded as punishable as conspiracy. Though the actual decision does not go to the length of holding that it was a conspiracy to *defraud*, the cases cited in the arguments for the Crown[4] throw a good deal of light on the subject, and also show that ultimately such agreements are "bottomed in fraud, which is a species of immorality[5]".

APPENDIX 31

PROPOSALS AS SHOWN IN THE FORM OF DRAFT AMENDMENTS TO THE INDIAN PENAL CODE

(This is a tentative draft only)

1. After section 379 of the Indian Penal Code (hereinafter called "the Code"), the following section shall be inserted, namely:—

"379A. *Whoever commits theft in respect of any public property shall be punished with imprisonment of either description which may extend to seven years, and shall also be liable to fine.* — Theft of public property (New).

Explanation.—*In this section, "public property" means the property of the Government, and includes the property of*— — *Cf.* section 21, Twelfth clause, Indian Penal Code, as amended by Act 40 of 1964.

(*a*) *a corporation established by or under a Central, Provincial or State Act;*

(*b*) *a Government company as defined in section 617 of the Companies Act, 1956; and*

(*c*) *a local authority.*"

2. After section 420 of the Code, the following section shall be inserted, namely:—

"420A. *Whoever, in pursuance of any contract for the delivery of any goods, the construction of any building or execution of other work, cheats the Government or other public authority*— — Section 420 A. Cheating public authorities. (New)

(*a*) *in the case of a contract for the delivery of goods, by supplying goods which are less in quantity than, or inferior in quality to, those he contracted to deliver, or which are otherwise not in accordance with the contract, or*

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[1]*R.* v. *Whitaker* (1914), 3 K.B. 1283 (C.C.R.).

[2]Halsbury, 3rd Edn, Vol. 10, page 313, para 570.

[3]*R.* v *Potter*, (1953), 1 All Eng. Reports, 296.

[4]See the arguments of Veale, Q. C. for the Crown.

[5]*Cf. Cockshott* v. *Bennett* (1788), 2 Term Re, 765; 100 English Reports 411.

APPENDIX 31 (concld.)

(*b*) *in the case of a contract for the construction of a building or execution of other work, by using goods which are less in quantity than, or inferior in quality to, those he contracted to use, or which are otherwise not in accordance with the contract,*

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be also liable to fine.

Cf. Section 420, Indian Penal Code.

Explanation.—*In this section, "public authority" means—*

(*a*) *a corporation established by or under a Central, Provincial or State Act;*

(*b*) *a Government company as defined in section 617 of the Companies Act, 1956; and* 1 of 1956.

Cf. section 21, Twelfth, clause Indian Penal Code, as amended by Act 40 of 1964.

(*c*) *a local authority.*

APPENDIX 32

PROPOSED AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1898.

(This is a tentative draft only)

In the Second Schedule to the Code of Criminal Procedure, 1898[1],— 5 of 1898.

(*i*) after the entry relating to section 379, the following entry shall be inserted, namely:—

1	2	3	4	5	6	7	8
379A	Theft of public property	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment of either description for 7 years and fine	Any Magistrate

(*ii*) after the entry relating to section 420, the following entry shall be inserted, namely:—

1	2	3	4	5	6	7	8
420A	Cheating public authorities.	May arrest without warrant	Warrant	Bailable	Not compoundable	Imprisonment of either description for 7 years and fine.	Court of Session Presidency Magistrate or Magistrate of the first class.

[1]These amendments are consequential on those proposed in the Indian Penal Code.

GMGIPND—T.S.S.—47 M. of Law—3-1-68—1,850.