CHAPTER 2

OFFENCES AGAINST NATIONAL SECURITY

The offences which are prejudicial to sovereignty, integrity and security of the nation or to its friendly relations with foreign states are generally called the offences against national security. Unlike other offences which are nothing more than mere acts or omissions made punishable by law, this category of offences are directed against the very existence of the state itself and are therefore peculiarly odious.

The most heinous and formidable offences among them have the peculiarity that if they are successfully committed the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is despatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the government, as the penal law is impotent against a successful rebel. So said the authors of the Indian Penal Code characterising these offences in contrast to others.

In reference to certain offences included in this category the Law Commission of India points out that such activities, if successful would bring into existence a parallel nation with its own sovereignty and territorial integrity which will

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1 The Law Commission of India, 43rd Report on Offences against National Security, p.93, the National Security Bill, 1971, cl. 2(h). The definition as such is not in the Report. Rather, the definition is one made in tune with the contents of the Report generally and cl.2(h) particularly.

2 Id. p.1. Though it has been so said in reference to 'treason', yet the Commission has taken the view that the expression 'crime against national security' conveys the idea of treason in a wide sense, at p. 2; the Code of Criminal Procedure, 1973, s. 2(n) provides: “'offence' means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act, 1871 (Act 1 of 1871).” See also the Indian Penal Code, 1860, s.40 and the General Clauses Act, 1897, s.3 (38).

3 The Notes appended to the Draft Penal Code, 1836 submitted by the First Indian Law Commission before the Government on 2nd May, 1837, at page 119. It is pertinent to note that the First Indian Law Commission appointed in 1834 by the Charter Act of 1833 consisted of Lord Macaulay, J.M. Macleod, G.W. Anderson, Hay Cameron and F. Millet. They used the expression 'State-crimes' with reference to the offences against national security.
be a rival to the country from which the territory is detached. It is thus doubtless that these offences, directly or indirectly, endanger the existence of the state together with its legal system. Now the matter of debate is as to whether the administration of criminal justice pertaining to them shall remain the same as that relating to other offences.

In every legal system these offences are treated specially, adopting different criminal justice measures. In international legal order also they are considered with utmost caution. The right to independence and state sovereignty is universally accepted as the fundamental right of each sovereign state, while the duty to refrain from intervening in the internal affairs of any other state and respect other states' independence and sovereignty is universally accepted as fundamental duty of each such state in order to make that fundamental right of the state more meaningful and effective. The international documents on human rights are thus made reserving the liberty of individual state to treat these offences on a totally different pedestal.

2.1 Philosophy underlying the offences

The concepts of state and nation, which are inseparable to each other, have paramount importance while elucidating this category of offences. Though we have several jurists and theories, yet Austin's theory of law remains the most comprehensive and important attempt to formulate a logically coherent legal system in the context of the modern state. The quintessence of his theory is that the law is the general command of the sovereign in an independent political society. The independent political society including the sovereign constitutes the state.

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4 The Law Commission of India, op. cit., p. 4.
5 The Universal Declaration of Human Rights; the International Covenants on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights.
8 Julius Stone, op. cit., pp. 69-73.
A group of men defined by reference to specific territory which they ordinarily inhabit constitute the society. Certain men amongst the group constitute the sovereign, who render no habitual obedience to others. The rest of the group constitute the subjects. The bulk of the subjects render habitual obedience to the sovereign. Such a group is called an independent political society or a state.9

Thus the concept of state carries the ideas of government, territory and population in it. Representing the organised power of the political society, the state has to exercise the function of controlling or setting in motion its forces for certain purposes. The authority constituted to exercise this function is called the government of the state.10 In a dictatorial state the government is appointed by the dictator or the ruler. In a republic the people choose their representatives to form the government. The three main branches of the state activity are the legislative, the executive and the judicial. For the security of civil liberties these activities are entrusted to different bodies with independent spheres of action.

The territory of state means a definite portion of the earth surface, which is in its exclusive possession and under its sovereignty. It includes the land with its bowels, waters and corresponding air space, within the borders of state.11 The totality of individuals living within the territory constitute the population of the state.12 The population constituting the political society of state must be considerably large.

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9 Ibid.
10 In modern state the government besides wielding the political power, co-ordinates and centralises in itself the collective resources and common activities of the people.
11 The land covers all the continental territory within the state borders. The waters include internal or national waters and territorial waters. The bowels below them belong to that state up to technically accessible depth. The air space includes the troposphere and stratosphere and a considerable part of outer space. The side limits of the state territory are designated to be the state borders. A natural or imaginary line on territorial or water surfaces defines the limits of state’s sovereignty over its land and waters, air space and natural resources. Each state has territory bounded by land or sea borders. The state border separates one state from that of another or the high seas. The state borders are inviolable. The state borderline is drawn under border treaties on geographical maps and on the land surface and is designated by special border sign posts.
12 Among them are the nationals of that state, including those who are staying abroad as well as foreign nationals and stateless persons permanently residing in the country.
The Constitution embodies all these ideas and concepts. It determines the territory and the population of India. It also determines the rights and duties of every individual member of the population. It provides for establishment of the organs of state including the government. Though the Constitution gives different meanings to the expression 'state' commensurate with its accompanying context, it declares that India is a nation comprising all these components.

13 The Constitution of India, Arts. 1 to 4 constituting Part I titled 'The Union and its Territory', Arts. 5 to 11 constituting Part II titled 'Citizenship'. See also the Citizenship Act, 1955.

14 Id., Parts II, III & IV A.

15 The Constitution does not define the expression 'Government'. In view of Art. 367, it is necessary to refer to the General Clauses Act, 1897. S.3(23) provides: "'Government' or 'the Government' shall include both the Central Government and any State Government.'; s.3(8) provides: "'Central Government' shall:- (a) in relation to anything done before the commencement of the Constitution, mean the Governor General or the Governor general in Council, as the case may be; and shall include,- (i) in relation to functions entrusted under sub-section (1) of Section 124 of the Governor of India Act, 1935, to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and (ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under sub-section (3) of Section 94 of the said Act; and (b) in relation to anything done or to be done after the commencement of the Constitution, mean the President; and shall include,- (i) in relation to functions entrusted under clause (1) of Article 258 of the Constitution, to the Government of a State, the State Government acting within the scope of the authority given to it under that clause; (ii) in relation to the administration of a Part C State before the commencement of the Constitution (Seventh Amendment) Act, 1956, the Chief Commissioner or the Lieutenant-Governor or the Government of a neighbouring State or other authority acting within the scope of the authority given to him or it under article 239 or article 243 of the Constitution, as the case may be; and (iii) in relation to the administration of a Union territory, the administrator thereof acting within the scope of authority given to him under article 239 of the Constitution.'; s.3(60) provides: "'State Government' as respects anything done before the commencement of the Constitution, shall mean, in a Part A State, the Provincial Government of the corresponding Province, in a Part B State, the authority or person authorised at the relevant date to exercise executive government in corresponding Acceding State, and in a Part C State, the Central Government; (b) as respects anything done after the commencement of the Constitution and before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a Part A State, the Governor, in a Part B State, the Rajpramukh, and in a Part C State, the Central Government; (c) as respects anything done or to be done after the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean, in a State, the Governor, and in a Union territory, the Central Government; and shall, in relation to functions entrusted under article 258A of the Constitution to the Government of India, include the Central Government acting within the scope of the authority given to it under that article.'

16 In Part I the expression 'states' specified in the First Schedule constituting the Union of India. Art.366(15) provides: "'Indian State' means any territory which the Government of the Dominion of India recognised as such a state." Art.12 defines 'the state' for the purpose of Part III. It provides: "In this part, unless the context otherwise requires, "the State includes the Government and Parliament of India and the government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India." The Preamble of the Constitution itself conveys that India is a nation.
Thus offence which are directed against the government, the territory or the population, and prejudicial to sovereignty, integrity and security of the nation are usually considered as the offences against national security. Furthermore, every nation has an interest to continue its existence and to preserve its national honour and integrity. This interest can be protected only by observing the international legal order. Maintaining peace and good relations with other powers of the world is thus only a matter of state policy. The offences prejudicial to the nation's friendly relation with foreign states are ultimately affecting the national security. Hence these offences are also treated under this category.

2.2 Governing statutes

The offences under the general classes, insurrection, assisting the enemy, relations with foreign states, offences relating to the armed forces, subversive activities and subversive associations constitute this category of offences.\(^{17}\) The following are the governing statutes:

(i) The Indian Penal Code, 1860, Chapters 6 and 7,
(ii) The Foreign Recruiting Act, 1874,
(iii) The Foreign Enlistment Act, 1870,
(iv) The Official Secrets Act, 1923,
(v) The Criminal Law Amendment Act, 1938,
(vi) The Criminal Law Amendment Act, 1961,
(vii) The Unlawful Activities (Prevention) Act, 1967 and

\(^{17}\) The Law Commission of India, 43\textsuperscript{rd} Report on Offences Against National Security, p.3.
2.3 Insurrection

Literally, the word 'insurrection' means an organised attempt by a group of people to defeat the government or the person who is in power and take control of the country, usually by violence.\(^{18}\) The group of offences involving direct internal opposition to the authority of the State can be collected under the head 'insurrection'.\(^{19}\) The offences of waging war and its allied offences come under this group.\(^{20}\) Thus the following offences are included under the heading 'insurrection':

1. Waging war against the Government of India,
2. Preparation to wage war,
3. Concealing to wage war,
4. Conspiracy to overawe the Government, Parliament etc.,
5. Preventing by force exercise of State authority in furtherance of inter-state disputes, and
6. Assault on the President and other high dignitaries.\(^{21}\)

2.4 Offences relating to waging war

The expression war is not limited here to the true war as contemplated by the international law, rather it also includes any forcible disturbance made by a considerable number of persons directed at some purpose which is not of a private but of a general character.\(^{22}\) There must be a deliberate and organised attack upon the Government machineries and servants to overcome them by force and violence and thus to prevent them from exercising their functions.\(^{23}\)

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\(^{19}\) The Law Commission of India, \textit{op. cit.}, p.12, para 3.1 to 3.

\(^{20}\) These offences are defined and punishable under Chapter-6 of the Indian Penal Code, 1860. The offence of waging war is described as 'levying war' in England, Canada and other Commonwealth countries.

\(^{21}\) The Law Commission of India, \textit{op. cit.}, p.14, para 3.7.


No specific number of persons is necessary to constitute this offence. The manner in which the offenders were equipped or armed is not material. The incriminating criterion is *quo animo* or the object of general public nature thereby striking directly against the government. There is no distinction between principal and accessory. All who take part in the unlawful act incur the same guilt.

Thus the offences of waging war and attempting or abetting to wage war are treated alike. Any person committing all or any of these acts is punishable with death or imprisonment for life in addition to fine. Unlike the principles governing the offence of abetment in general, there is no distinction between the accomplished abetment and the unaccomplished abetment instigating the offence of waging war.

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26 Ibid.
27 The Indian Penal Code, 1860, s.121. See also the Law Commission of India, *op. cit.*, p. 94, the National Security Bill, 1971, cl.3.
28 *Hasraf Mohalli v. Emperor*, (1922) 24 Born LR 885: It is not essential that as a result of the abetment the war should in fact be waged. The main purpose of the instigation should be 'the waging of war'. It should not be merely a remote and incidental purpose but the thing principally aimed at by the instigation. There must be active suggestion or stimulation to the use of violence. See also *Magan Lal Radhakrishnan v. Emperor*, AIR 1946 Nag 173. More solid reasons for treating abetment of waging war exceptionally by doing away the distinction between the accomplished abetment and the unaccomplished abetment instigating the offence of waging war can be seen in the words of the authors of the Code in the Notes appended to the Draft Penal Code, 1836. It reads thus at page 119: "We have made the abetting of hostilities against the Government, in certain cases, a separate offence, instead of leaving it to the operation of the general law laid down in the chapter on abetment. We have done so for two reasons. In the first place, war may be waged against the Government by persons in whom it is no offence to wage such war, by foreign princes and their subjects. Our general rules on the subject of abetment would apply to the case of a person residing in the Indian territories who would abet a subject of the Indian Government in waging war against the Government; but they would not reach the case of a person who, while residing in the Indian territories, should abet the waging of war by foreign prince against the Indian Government. In the second place, we agree with the great body of legislators in thinking that though in general a person who has been a party to criminal design which has not been carried into effect ought not to be punished so severely as if that design had been carried into effect, yet an exception to this rule must be made with respect to high offences against the State; for State-crimes, and especially the most heinous and formidable State-crimes have this peculiarity that if they are successfully committed, the criminal is almost always secure from punishment. The murderer is in greater danger after his victim is dispatched than before. The thief is in greater danger after the purse is taken than before. But the rebel is out of danger as soon as he has subverted the Government as the penal law is impotent against a successful rebel, it is consequently necessary that it should be made strong and sharp against the first beginning of rebellion, against treasonable design which have been carried no further than plots and preparations. We have, therefore, not thought it expedient to leave such plots and preparations to the ordinary law of abetment. Under that general law, a conspiracy for the subversion of the Government would not be punished at all if the conspirators were detected before they had done more than discuss plans, adopt resolutions and interchange promises of fidelity. A conspiracy for the subversion of the Government, which should be carried as far as the gunpowder treason or the assassination plot against William the Third would be punished very much less severely than the counterfeiting of a rupee, or the presenting of a forged cheque. We have, therefore, thought it absolutely necessary to make a separate provision for the previous abetting of great State offences. The subsequent abetting of such offences may, we think without inconvenience, be left to be dealt with according to the general law."
Apart from these three offences relating to waging war, conspiracy to commit any of those offences is made yet another crime.⁹ Along with it the conspiracy to overawe the Government by means of criminal force or the show of criminal force is also a crime bearing the same guilt as the former bears.³² To constitute such a conspiracy it is not necessary that any act or illegal omission shall take place in pursuance thereof.⁴ These offences carry a punishment of imprisonment for life or with imprisonment of either description which may extend to ten years in addition to fine.³⁵ The fine is a mandatory punishment for all these offences.³⁵

2.5 Preparation to wage war

The offence of preparing to wage war consists of collection of men, arms or ammunition or preparing otherwise with intention of either waging or being prepared to wage war against the Government of India.⁶ Any person commits this offence is punishable with imprisonment for life or imprisonment of either description for a term not exceeding ten years in addition to fine.³⁷

⁹ The Indian Penal Code, 1860, s.121A. The Criminal Law (Amendment) Act, 1913 included this section in the Code. A conspiracy is a combination of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. For general principles of the offence of conspiracy see: Pulim Behary Das v. Emperor, 16 CWN 1106; Sorrel v. Smith, [1925] AC 700; DPP v. Doot, [1973] 1 All ER 940 (HL); R v. Cooke [1986] 2 All ER 985 (HL).

³⁰ See Arawindan v. State of Kerala, 1983 CriLJ 1259 (Ker HC): The word 'overawe' clearly imports more than the creation of apprehension or alarm or fear. Ramanand v. State, (1950) 30 Pat 152: The word overawe appears to connote the creation of a situation in which the members of the Central or State Governments feel themselves compelled to choose between yielding to force or exposing themselves or members of the public to a very serious danger.

³¹ Government includes both Central and State Governments. See s.121A.


³³ Id. Explanation: This is an exception to the general principle of conspiracy contemplated under s.120A. In State v. Nalini and ors., (1999) 5 SCC 253, per D.P. Wadhwa, J at para 583: for details see Annexure I.


³⁵ Ibid.

³⁶ Id. s.122.

³⁷ Ibid. See also the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.4.
2.6 Concealing design to wage war

The concealment of the existence of a design to wage war against the Government of India constitutes this offence. The offender does it by any act or by any illegal omission intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate the waging of such war. The offence is punishable with imprisonment of either description for a term which may extend to ten years in addition to a mandatory fine.

2.7 Assaulting President or Governor

If any person assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes by means of criminal force or the show of criminal force, or attempts so to overawe the President of India or the Governor of any State it constitutes this offence. It must be done with the intention of inducing or compelling such President

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38 Id, s.123.
39 Ibid; s.33 provides: “The word ‘act’ denotes as well a series of acts as a single act; the word ‘omission’ denotes as well a series of omissions as a single omission”; s. 43 provides: “The word ‘illegal’ is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be ‘legally bound to do’ whatever it is illegal in him to omit.”
40 Ibid. See also the Law Commission of India, loco cit., the National Security Bill, 1971, cl.5.
41 Id, s.124; s. 351 defines ‘assault’ as: “Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault. Explanation.- Mere words do not amount to an assault. But the words which a person uses may give to gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.”; s. 339 defines ‘wrongful restraint’ as: “Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person. Exception.- The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.”; s. 349 defines ‘force’ as: “A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other’s body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other’s sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described: First.- By his own bodily power. Secondly.- By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person. Thirdly.- By inducing any animal to move, to change its motion, or to cease to move.” s. 350 defines ‘criminal force’ as: “Whoever intentionally uses force to any person, without that person’s consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.”
or Governor to exercise or to refrain from exercising in any manner any of the lawful powers of such President or Governor. The punishment provided for the offence is imprisonment of either description for a term which may extend to seven years, in addition to a mandatory fine. The Law Commission has recommended to extend the scope of the offence so as to criminalise similar acts against the Vice-President of India, the Chief Justice of India, the Speaker of the House of the People, the Chief Justice of any High Court, the Speaker of the Legislative Assembly of any State and the Chairman of the Legislative Council of any State also. It is desirable as well.

2.8 Sedition

Sedition is really defamation of the State. In broad sense it is disloyalty in action. In India the scope of offence is limited. A person commits the offence of sedition when he brings or attempts to bring into hatred or contempt, or excites or

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42 Ibid.
43 Ibid.
44 The Law Commission of India, loc. cit., the National Security Bill, 1971, cl.8. It provides the expression ‘office-holder’ to describe all these dignitaries. One more offence has been recommended to be included under the head ‘insurrection’ vide s.7. It provides: “Whoever, by means of force or show of force, prevents or attempts to prevent any State from exercising its authority in any part of that State, with a view to securing an alteration of the boundaries of that State, or in furtherance of a dispute between that State and another State or the Union, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to a fine.”
45 Lord Fitzgerald explained the full meaning of sedition in R v. Sullivan, 1841 Carrington and Marshman 209. It reads: “Sedition is a crime against society, nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word or deed, or writing which are calculated to disturb the tranquility of the State, and lead ignorant person to endeavour to subvert the Government and laws of the Empire. The objects of sedition generally are to induce discontent and insurrection and to stir up opposition to the Government and bring the administration of justice in contempt, and the very tendency of sedition is to incite the people into insurrection and rebellion. Sedition has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war, or to bring into hatred or contempt the Sovereign or the Government, the laws or Constitution of the realm and generally all endeavours to promote public disorder.”
46 The Indian Penal Code, 1860, s.124A embodies only one aspect of the English law of sedition. The Indian law criminalise only seditions libel- or publication of matter calculated to bring the Sovereign or the Government into hatred or to excite disaffection towards them.
attempts to excite disaffection towards the Government established by law in India.\textsuperscript{47} Such act or attempt must be done by words, either spoken or written, or by signs or by visible representation or otherwise.\textsuperscript{48}

The expression ‘disaffection’ includes disloyalty and all feelings of enmity.\textsuperscript{49} No comments expressing disapprobation of the measures of the government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection constitute sedition.\textsuperscript{50} Similarly no comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, constitute sedition as well.\textsuperscript{51} The offence carries the punishment, imprisonment for life and fine, or imprisonment which may extend to three years and/or fine.\textsuperscript{52}

\textsuperscript{47} Ibid. As the words of provision show that incitement violence is not at all essential to constitute sedition. See Queen-Empress v. Bal Gangadhar Tilak, 22 Bom 112 (PC); The expression ‘Government established by law in India’ means ruling authority and its representatives as such- the existing political system as distinguished from any particular set of administrators. It means the various Governments constituted by the statutes relating to the Government of India consolidated into the Constitution and denotes the person or persons authorized by law to administer Executive Government in any part of India. It includes the State Government, as well as the Central Government of India. See also Kshiteeschandra Ray Chandhuri v. Emperor, 59 Cal 1197; Baskar v. Emperor, (1906) 8 Bom LR 421.

\textsuperscript{48} Ibid; It is not necessary that the attempt need be successful. Attempt does not imply success. Whether the intention has achieved the result is immaterial. See Bhaskar, (1906) 8 Bom LR 421; Luxmon, (1899) 2 Bom LR 286; Disaffection may be excited in a thousand different ways. A poem, an allegory, a drama, a philosophical or historical discussion, may be used for the purpose exciting disaffection. The expression ‘visible representation’ covers a wood-cut or engraving of any kind. See Raghubir Singh v. State of Bihar, AIR 1987 SC 149.

\textsuperscript{49} Id., Explanation 1.

\textsuperscript{50} Id., Explanation 2.


\textsuperscript{52} Id., s.124A; In Kedarnath v. State of Bihar, AIR 1962 SC 955 the Supreme Court declared valid section 124A, IPC holding that the section did not violate Art.19(1) (a) of the Constitution and held: “The expression ‘Government established by law’ is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. That is why sedition as the offence in s.124-A has been characterised, comes under Chapter VI relating to offences against the State. Hence any act within the meaning of s.124-A which has the effect of subverting the Government by bringing that Government into contempt or hatred or creating disaffection against it, would be within the penal statute, because the feeling of disloyalty to the Government established by law or enmity to its import the idea of tendency to publish disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc. which have implicit in them ‘revolution’ have been made penal by the section in question.” This decision settled many controversies clouded around this section. See Niharendu Dutt Majumdar v. The King Emperor, AIR 1942 FC 22; King Emperor v. Sadashiv Narayan Bhalerao, ILR 1947 Bom 110 (PC); Rana Kurnip v. Sirkar, 1949 KLT 27 (TC HC); Romesh Thappar v. State of Madras, AIR 1950 SC 124; Tara Singh Gapichand v. State, AIR 1951 Punj 27 –Where s.124A, IPC was declared void in view of Art.13(1); State of Bihar v. Shailabala Devi, AIR 1952 SC 329; Debi Soren & Ors. v. State, AIR 1954 Patna 254.
2.9 Offences prejudicial to relation with foreign states

Waging war against foreign state

Waging war against the Government of any Asiatic Power in alliance or at peace with the Government of India is an offence.\textsuperscript{53} Attempting and abetting to wage such war are also separate and independent offences carrying the same punishment.\textsuperscript{54} Imprisonment for life to which fine may be added, or imprisonment of either description for a term which may extend to seven years to which fine may be added or fine is the punishment provided for all the three offences.\textsuperscript{55}

Depredation

The depredation committed on the territories of any power in alliance or at peace with the Government of India is a crime.\textsuperscript{56} Equally, the preparation to commit such depredation is also an independent offence.\textsuperscript{57} Literally, depredation means an act causing damage or destruction.\textsuperscript{58} Whoever commits either of the offences shall be punished with imprisonment of either description for a term which may extend to seven years, in addition to fine and forfeiture of any property used or intended to be used in committing such depredation, or acquired by such depredation.\textsuperscript{59}

\textsuperscript{53} Id. s.125.
\textsuperscript{54} Ibid.
\textsuperscript{55} Ibid. The Law Commission has recommended to widen the scope of offence by replacing 'Asiatic power' with 'foreign state'. The recommended punishment is only imprisonment for a term which may extend to ten years in addition to fine. See the Law Commission of India, \textit{op. cit.}, p.96, the National Security Bill, 1971, cl.14.
\textsuperscript{56} The Indian Penal Code, 1860, s.126.
\textsuperscript{57} Ibid.
\textsuperscript{59} Ibid. See also the Law Commission of India, \textit{loc. cit.}, the National Security Bill, 1971, cl.15.
Receiving property

Receiving property with knowledge that the same has been taken in the commission of such waging war and depredation is yet another crime.60 Whoever so receives such property shall be punished with imprisonment of either description for a term which may extend to seven years in addition to fine and forfeiture of the property so received.61

2.10 Offences of recruiting and enlistment

If the Central Government considers it necessary so to do, it may prohibit or impose condition on recruiting for the service of a specified foreign state, and enlistment for such service.62 It shall be done by notification in the Official Gazette. It shall be necessary in the interest of friendly relations with foreign states or national security.63

Contraventions of such prohibition or conditions are offences. Inducing or attempting to induce, any person to accept or agree to accept, or to proceed to any place with a view to obtaining, any commission or employment in the service of a foreign state in contravention of the notification is thus an offence.64 Similarly, aiding with knowledge in the engagement of any person so induced by forwarding or conveying him or by advancing money or in any other way whatsoever in contravention of the notification is also an offence.65 Whoever commits any of the offences shall be punishable with imprisonment for a term which may extend to seven years, or with fine,

60 The Indian Penal Code, 1860, s.127.
61 Ibid. See also the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.16.
62 The Foreign Recruiting Act, 1874, ss.3 and 4, and the Foreign Enlistment Act, 1870 (English), s.4.
63 Ibid.
64 Ibid.
65 The Foreign Recruiting Act, 1874, s.6 (a).
66 Id, s.6 (b).
or with both. Equally punishable are the acts of enlisting himself with a view to obtaining any commission or employment in the armed forces of a foreign State and of aiding with knowledge such enlistment of any person.

2.11 Assisting the enemy

Public servant allowing prisoner to escape

A public servant having the custody of any State prisoner or prisoner of war, voluntarily allowing such prisoner to escape from any place in which such prisoner is confined is punishable. This offence carries the punishment of imprisonment for life, or imprisonment of either description for a term which may extend to ten years in addition to fine. There is also a connected offence. If such public servant negligently suffers such State prisoner or prisoner of war to escape from such place of confinement he is punishable with simple imprisonment for a term which may extend to three years in addition to fine.

Aiding escape of, rescuing or harbouring prisoner

Aiding or assisting with knowledge any state prisoner or prisoner of war in escaping from lawful custody is a crime. Similarly rescuing or attempting to rescue any such prisoner is also a crime. Moreover, harbouring or concealing any such

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66 Supra nn.64 and 65.
67 The Foreign Enlistment Act, 1870 (English), s.4. See the Law Commission of India, op. cit., Chapter 5, pp 18 – 25 and 96, the National Security Bill, 1971, cl.17. The Commission has recommended to bring only the offences relating to recruitment and enlistment pertaining to the service in the armed forces of the foreign state to the category of offences against national security. It has proposed to reduce the punishment to 3 years imprisonment.
68 The Indian Penal Code, 1860, s.128; s.21, defines 'public servant'.
69 Ibid; see also the Law Commission of India, op. cit., p.95, the National Security Bill, 1971, cl.12. The proposed section deals only with prisoner of war. It carries only less punishment, namely, rigorous imprisonment for a term which may extend to ten years in addition to fine.
70 Id, s.129. See also the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.13. As in the case of s.12, this section also deals only with prisoner of war.
71 Id, s.130.
72 Ibid.
prisoner who has escaped from lawful custody is yet another crime. Equally punishable is the offence of offering or attempting to offer any resistance to the recapture of such prisoner. Whoever commits any of these offences is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years in addition to fine. Any such prisoner who is permitted to be at large on his parole within certain limits is deemed to escape from lawful custody if he goes beyond the permitted limits.

The acts of assisting enemy countries and infiltration into India with object of causing danger to national security are not yet made offences. It is high time to criminalise these acts in view of their being multiplied day by day. It is worth noting the Law Commission’s recommendations in this regard.

2.12 Offences relating to armed forces

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

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73 Ibid.
74 Ibid.
75 Ibid; See the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.11. Here also the section deals only with prisoner of war.
76 Id, Explanation.
77 The Law Commission of India, op. cit., Chapter-4, pp.15 to 17. The exact recommendation of the Commission can be read in cl.s. 9 and 10 of the National Security Bill, 1971. It reads: "9. Whoever assists in any manner an enemy at war with India, or the armed forces of India are engaged in hostilities, whether or not a state of war exists between that country and India, shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."; “10. Whoever, unlawfully enters into, or remains in, India for the purpose of committing an offence under this Act shall be punishable with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”
Abetting mutiny and attempt to seduce

Abetting to commit mutiny by an officer or member of any of the armed forces is an offence.\(^7\) The penal gravity of the offence varies depending whether the mutiny is committed or not pursuant to such abetment. Thus if mutiny be committed in consequence of that abetment, the abettor shall be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, in addition to fine.\(^8\) If no mutiny be committed pursuant to that abetment, the abettor shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, in addition to fine.\(^9\) Similarly whoever attempting to seduce any such officer or member of any of the armed forces is liable to punishment same as that provided for the offence of unsuccessful abetment of mutiny.\(^10\)

Abetment of assault

Abetting an assault by an officer or member of any of the armed forces,\(^11\) on any superior officer being in the execution of his office is a crime.\(^12\) The gravity of punishment varies in accordance with whether the assault is committed pursuant to the abetment. If such assault is committed pursuant to the abetment, the abettor shall be punished with imprisonment of either description for a term which may extend to seven years, in addition to fine.\(^13\)

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\(^7\) The Indian Penal Code, 1860, ss.131 and 132. The expression 'officer or member of any of the armed forces' means an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India. The explanation to s.131 clarifies as follows: “Explanation.- In this section the words “officer”, “soldier”, “sailor”, and “airman”, include any person subject to the Army Act, the Army Act, 1950, the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934, the Air Force Act or the Air Force Act, 1950, as the case may be.”

\(^8\) Id., s.132.

\(^9\) Id., s.131.

\(^10\) Ibid. see 43rd Report, Chapter 6, p.26 to 29, and cls.18 and 19 of the National Security Bill, 1971. The proposed sections provide maximum punishment only ten years imprisonment for offences of unsuccessful abetment of mutiny and attempt of seducing.

\(^11\) Supra n.79.

\(^12\) The Indian Penal Code, 1860, ss.133 and 134.
years in addition to fine.\textsuperscript{85} And in case no assault is committed in consequence of the abetment the abettor shall be punished with imprisonment of either description for a term which may extend to three years in addition to fine.\textsuperscript{86}

**Abetment of desertion**

Abetting the desertion of any officer or member of any of the armed forces\textsuperscript{87} is an offence and the abettor shall be punished with imprisonment of either description for a term which may extend to two years and/or with fine.\textsuperscript{88}

**Harbouring deserter**

Any person harbouring a deserter from any of the armed forces with knowledge or belief of his desertion is punishable.\textsuperscript{89} Such deserter may be any officer or member of any of the armed forces.\textsuperscript{90} No criminality is attributed to a wife harbouring her husband who is a deserter.\textsuperscript{91} The punishment provided is imprisonment of either description for a term which may extend to two years and/or with fine.\textsuperscript{92}

**2.13 Offences as to deserter's concealing**

The master or person in charge of a merchant vessel, on board of which any such deserter is concealed, shall be liable to be punished.\textsuperscript{93} If such master or other person might have known of such concealment but for some neglect of his duty or but for some

\textsuperscript{85} Id., s.134.

\textsuperscript{86} Id., s.133; see also the Law Commission of India, op. cit., p.97, the National Security Bill, cl.20 1971, op. cit.

\textsuperscript{87} Supra n.79.

\textsuperscript{88} The Indian Penal Code, 1860, s.135; see also the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.21., Vide the section it recommends to provide for five years imprisonment to the abettor if the desertion is committed in consequence of that abetment.

\textsuperscript{89} Id., s.136.

\textsuperscript{90} Supra n.79.

\textsuperscript{91} The Indian Penal Code, s.136, Explanation.

\textsuperscript{92} Id., s.136; see also the Law Commission of India, loc. cit., the National Security Bill, 1971, cl.22.

\textsuperscript{93} Id., s.137.
want of discipline on board of vessel he is ignorant of such concealment, he shall be liable to a penalty not exceeding five hundred rupees though he is ignorant of such concealment.94

2.14 Abetting act of insubordination

Any person abetting what he knows to be an act of insubordination by an officer or a member of any of the armed forces95 shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months and/or with fine.96

2.15 Wearing garb or carrying token

Any person not being a member of any of the armed forces of India97 wears any garb or carries any token resembling any garb or token used by such member of the armed force with the intention that it may be believed that he is such a member of the armed force, commits a crime.98 The punishment provided for this offence is imprisonment up to three months and/or fine.99

2.16 Incitement to mutiny

Any person making, publishing or circulating any statement, rumour or report with intend to cause, or which is likely to cause any officer or member of any of the armed forces of India100 to mutiny or otherwise disregard or fail in his duty as such is guilty.101 This offence carries the punishment of imprisonment upto three years and/or fine.102

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94 Ibid.
95 Supra n.79.
96 The Indian Penal Code, 1860, s.138.
97 Supra n.79.
98 The Indian Penal Code, 1860, s.140.
99 Ibid; See the National Security Bill, 1971, cl.27 op. cit.
100 Supra n.79.
101 The Indian Penal Code, 1860, s.505.
102 Ibid; see the Law Commission of India, op. cit., p.98, the National Security Bill, 1971, cl.24. The proposed section incorporates the recommendation of the Law Commission to exempt those persons making, publishing, circulating such things who has reasonable grounds for believing that such things are true and does so in good faith and without any such culpable intention, from the scope of this offence.
No person subject to the law governing the armed forces is subject to the punishment provided for the offences of this class. Apart from these offences the Law Commission has recommended to include certain offences relating to dissuasion from enlisting and instigation into mutiny or insubordination after enlistment, in this class.

2.17 Subversive activities

Committing any unlawful activity is an offence. The expression ‘unlawful activity’ means any action taken, whether by act done or by words spoken or written or by signs or by visible representation, or otherwise-

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

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

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

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103 Id, s.139. The Army Act, the Army Act, 1950, the Naval Discipline Act, the Indian Navy (Discipline) Act, 1934, the Air Force Act and the Air Force Act, 1950 constitute the law governing the Armed Forces of India. See also cl.26, the National Security Bill, 1971, op. cit.

104 The Law Commission of India, op. cit., p.29. The National Security Bill, 1971, cl.25 contains this recommendation as: "Whoever:

(a) with intent to affect adversely the recruitment of persons to serve in the armed forces of the Union, dissuades or attempts to dissuade the public or any person from entering any such forces, or

(b) without dissuading or attempting to dissuade from entering such forces, instigates the public or any person to do, after entering any such force, anything which is punishable as mutiny or insubordination under the law relating to that armed force, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Explanation.- The provisions of clause (a) do not extend to comment on, or criticism of, the policy of the Government in connection with the armed forces, made in good faith without any intention of dissuading from enlistment, or to advice given, or of any member of his family, or any of his dependants."

105 The Unlawful Activities (Prevention) Act, 1967, s.13(1); the Law Commission of India, op. cit., pp.30 & 31.

106 Id, s.2(f).
In reference to a State territory, the term cession literally means yielding or giving up its ownership to someone else unwillingly or because forced to do so.\textsuperscript{107} It includes the admission of claim of any foreign country to any part of India.\textsuperscript{108} Similarly, so far as a State territory is concerned the term 'secession' literally means its becoming independent or its withdrawing from the federation.\textsuperscript{109} It includes the assertion of any claim to determine whether a part of India will remain within the Union.\textsuperscript{110}

The offence of committing such an unlawful activity is punishable with imprisonment for a term which may extend to seven years in addition to fine.\textsuperscript{111} Equally punishable are the offences of abetting the commission of advocating and advising any such unlawful activity.\textsuperscript{112}

2.18 Subversive association

The Central Government may declare any association to be an unlawful association for certain reasons.\textsuperscript{113} The Government can so declare three types of associations. First, association whose very object is the commission of an unlawful activity, secondly, associations which encourage or aid persons, whether members or not, to undertake any unlawful activity, and thirdly, associations whose members undertake such activity, whether or not the object of the association is the commission of such acts.\textsuperscript{114}

\textsuperscript{107} Cambridge International Dictionary of English, 1996, and Chambers 20\textsuperscript{th} Century Dictionary, 1983. Both dictionaries do not contain the word cession as such. The meaning given is one developed from the root verb cede.
\textsuperscript{108} The Unlawful Activities (Prevention) Act, 1967, s.2(b).
\textsuperscript{109} Supra n.107.
\textsuperscript{110} The Unlawful Activities (Prevention) Act, 1967, s.2(d).
\textsuperscript{111} Id, s.13(1).
\textsuperscript{112} Ibid; This penal provision is not applicable to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf; see also the Law Commission of India, op. cit., pp.30, 31 and 99.
\textsuperscript{113} The Unlawful Activities (Prevention) Act, 1967, s.3(1). Such declaration shall be made by notification in the official Gazette.
\textsuperscript{114} Id, s.2(f); the Law Commission of India, op. cit., pp.70 – 72, 106 & 107.
2.19 Spying

The offence of spying consists of any of the three activities. Any person does any such activity for any purpose prejudicial to the safety or interest of the state he is said to commit the offence. Approaching, inspecting, passing over or being in the vicinity of or entering any prohibited place constitutes the first limb of the offence.

The Indian Official Secrets Act, 1923, s.3(1); In the decision of the House of Lords in Chandler v. DPP, [1962]3 WLR 694 at p.705 Lord Reid explained the expression 'safety or interests of the state' as: "'state' is not an easy word. It does not mean the Government or the Executive. 'L'etat c'est moi' was a shrewd remark, but can hardly have been intended as definition even in France of the time. And I do not think that it means, as counsel urged, the individuals who inhabit these islands. The statute cannot be referring to the interests of all those individuals because they may defer and the interests of the majority are not necessarily the same as the interest of the state. Again we have seen only too clearly in some other countries what can happen if you personify and almost deify the state. Perhaps the country or the realm are as good synonymous as one can find and I would be prepared to accept the organised community as coming as near to a definition as one can get." In the same decision another member of the Bench Lord Radclif explained the meaning of 'motive' and 'purpose' at p.709 as: "All controversies about motives or intentions or purposes are apt to become involved through confusion of the meaning of the different terms and it is perhaps not difficult to show by analysis that the ideas conveyed by these respective words merge into each other without a clear line of differentiation. Nevertheless the distinction between motive and purpose, for instance is familiar enough in ordinary discussion and there are branches of law in which the drawing of such a distinction is unviolable... I do not think that the ultimate aims of the appellants in bringing about these demonstration of obstruction constituted a purpose at all within the meaning of the Act [The Official Secrets Act, 1911, (English)]. I think that those aims constituted their motive, the reason why they wanted the demonstration, but they did not qualify the purpose for which they sought to enter the airfield." It is worth noting that the Law Commission of India in its 43rd Report at p.44, assumed that the courts in India would adopt the above view held in Chandler's case.

Id, s.3(1)(a); s.2(8) defines 'prohibited place'. It provides: "'prohibited place' means-
(a) any work of defence, arsenal, naval, military or airforce establishment or station, or any minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of Government, or any military telegraph or telephone so belonging or occupied, or any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;
(b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of Government, or otherwise on behalf of Government;
(c) any place belonging to or used for the purpose of Government which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;
(d) any railway, roadway or channel, or other means of communication by land or otherwise including any works or structures being part thereof or connected therewith or any channel used for gas, water or electricity works or other works for purposes of a public character at any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Government and which is for the time being declared by the Central Government, by notification in the Official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality."
the second limb consists of making any sketch, plan, model or note which is calculated to be or might be or is intended to be, directly or indirectly useful to an enemy.\textsuperscript{117} The third limb consists of obtaining, collecting, recording or publishing or communicating to any other person any secret official code or pass words, or any sketch, plan, model, article or note or other document or information which is calculated to be or is intended to be, directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the state of friendly relations with foreign states.\textsuperscript{118} The offence carries the punishment of imprisonment which may extend to fourteen years where the offence is committed, and three years in other cases.\textsuperscript{119}

\textsuperscript{117}Id, s.3(1)(b); s.2(9) defines ‘sketch’ as: “‘sketch’ includes any photograph or other mode of representing any place or thing.”; s.2(7) provides: “‘photograph’ includes an undeveloped film or plate.”

\textsuperscript{118}Id, s.3(1)(c); s.2(2) provides: “expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to, obtaining or retaining any sketch, plan, model, article, note or document, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document.”; s.2(3) provides: “‘document’ includes part of a document.”; s.2(4) provides: "‘model’ includes design, pattern and specimen.”

\textsuperscript{119}Id, s.3(1); The section is specific to the effect that the aggravated punishment shall be given where the offence is committed in relation to any work of defence, arsenal or naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of government or in relation to any secret official code. As to the suggestion to impose death penalty for the offences under ss.3 and 5 the Law Commission of India in its 35th Report on capital punishment held the view that the present punishment is adequate. Paragraphs 473 and 474 reveal the reason therefore: “473. The offence of espionage should, it has been suggested, be made a capital one. It may be noted, that where espionage consists of acts which constitute an abetment of the waging of war against the State, the offence would be at a penalty of death. Other cases of collection and transmission of State secrets mostly fall under the Official Secrets Act, s.3(1) of which provides the maximum punishment of imprisonment up to 14 years. In times of emergency, additional provisions are made by special legislation.

474. Thus under s.5(4) of the Official Secrets Act, 1923, as amended by the Defence of India Act, a person guilty of an offence under s.5 of the Official Secrets Act shall, if such offence is committed with intend to wage war or to assist any country committing external aggression against India, be punishable with death or imprisonment for life or imprisonment up to ten years, etc.”
Divulging official secrets

If any person having in his possession or control any official secret commits any of the following activities is said to commit the offence of divulging the official secrets.\(^{120}\) The first limb consists of willful communication on his part the official secret to any person.\(^{121}\) However any such communication to a person to whom he is authorised to communicate it or a Court of Justice or a person to whom it is his duty to communicate in the interests of a State is exempted.\(^{122}\) Secondly, if he uses it for the benefit of any foreign power or in any manner prejudicial to the safety of the State it would constitute another limb of this offence.\(^{123}\) The third limb consists of retaining it when he has no right to do so, or when it is contrary to his duty to do so, or willful failure to comply with any direction issued by lawful authority with regard to its return or disposal.\(^{124}\) And last, his failure to take reasonable care of or his so conducting himself as to endanger the safety of the official secret, constitutes the fourth limb of the offence.\(^{125}\)

The punishment provided for this offence is imprisonment for a term which may extend to three years with or without fine.\(^{126}\) There are two other equally punishable offences in this category. Any person voluntarily receiving any official

\(^{120}\) Id, s.591; the expression official secret is not defined as such in the Act, rather it is used in conjunction with the view of the Law Commission as a matter of convenience and thus to avoid repetition. Thus the expression official secret covers any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place or which is likely to assist directly or indirectly an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations with foreign States or which has been made or obtained in contravention of the Act or which has been entrusted in confidence to him by any person holding office under Government or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government or as a person who has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract.

\(^{121}\) Id, s.5(1)(a).

\(^{122}\) Ibid.

\(^{123}\) Id, s.5(1)(b).

\(^{124}\) Id, s.5(1)(c).

\(^{125}\) Id, s.5(1)(d).

\(^{126}\) Id, s.5(4).
secret knowing or having reason to believe that it is communicated to him in contravention of the Act, commits an offence as is liable to be so punished.\textsuperscript{127} Lastly, any person having in his possession or control any such official secret communicates it directly or indirectly to any foreign power or any other manner prejudicial to the safety or interests of the State is liable to be so punished.\textsuperscript{128}

**Offences relating to official uniforms, documents and seals**

If any person does any of the following acts for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety or interests of the State he is said to commit this offence.\textsuperscript{129}

Using or wearing by any person without lawful authority any armed force or police uniform or any uniform so nearly resembling the same as to be calculated to deceive or falsely represent to be a person who is or has been entitled to use or wear any such uniform, constitutes this offence.\textsuperscript{130} Secondly, knowingly making or conniving at the making of any false statement or any omission orally or in any document signed by an accused or on his behalf, constitutes the offence.\textsuperscript{131} The third limb of the offence consists of forging, altering or tampering with any official document or knowingly using or having in possession any such forged, altered or irregular official document.\textsuperscript{132}

If a person personates or falsely represents himself to be, a person holding or in the

\textsuperscript{127}Id, s.5(2).

\textsuperscript{128}Id, s.5(3); the Law Commission of India, 43rd Report, pp.50-52, 101 & 102, the National Security Bill, 1971, cl.34.

\textsuperscript{129}Id, s.6(1); see also the Law Commission of India, op. cit., pp. 52-54.

\textsuperscript{130}Id, s.6(1)(a); the expression armed force is not used in the section in relation to uniform. Rather the expression 'naval, military, airforce' is used there.

\textsuperscript{131}Id, s.6(1)(b).

\textsuperscript{132}Id, s.6(1)(c); the expression official document includes any passport or any naval, military or airforce official pass, permit, certificate, licence or other document of similar character.
employment of a person holding office under government or falsely represents himself to be or not to be a person to whom an official document or secret official code or password has been duly issued or communicated, he is said to commit this offence. Another act may also constitute this limb of the offence. Thus a person knowingly making any false statement with intention to obtain any such official document, secret official code or password whether for himself or any other person commits this offence. The last limb of the offence consists of the acts of using, having in possession, or under control, without lawful authority manufacturing or selling any official seal or any die or any seal or stamp so nearly resembling an official seal has to be calculated to deceive, or counterfeiting any official seal.

The above offence carries a punishment for a term which may extend to three years and/or fine. There are some more equally punishable offences under this class. Any person retaining any official document without right to retain it for any purpose prejudicial to be so punished. Similarly any person wilfully omitting to comply with any directions issued by or under authority of government with regard to return or disposal of any official document contrary to his duty to retain it for any such purpose, commits the same offence. Here, the official document includes any such document whether or not completed or issued for use.

Any person allowing another person to have possession of, or communicating another person, any official document issued for his use alone for any

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133 Id., s.6(1)(d).
134 Id., s.6(1)(e); the expression official seal means one made or provided by any department of the government or by any naval, military or airforce authority appointed by or acting under the government.
135 Id., s.6(3).
136 Id., s.6(2)(a).
137 Ibid.
138 Ibid.
purpose prejudicial to the safety of the State, commits an offence.\textsuperscript{139} Possessing without lawful authority or excuse any official document, secret official code or password issued for the use of another person is also a crime.\textsuperscript{140} Wilful omission to restore any such official document to the authority by whom or for whose use it was issued or to a police officer on obtaining the same by finding or otherwise is yet another offence, when the omission is made for a purpose prejudicial to the safety of the State.\textsuperscript{141} Manufacturing or selling or having in possession for sale any such die, seal or stamp as aforesaid for the same purpose is the last offence in this category.\textsuperscript{142}

2.20 Interfering with police and armed force officers

It is a general duty that in the vicinity of any prohibited place no person shall obstruct, knowingly mislead or otherwise interfere with or impede any police officer or any member of the armed force engaged on guard, sentry, patrol or other similar duty in relation to such prohibited place.\textsuperscript{143} If any person acts in violation of this duty he is punishable with imprisonment which may extent to three years with or without fine.\textsuperscript{144}

2.21 Omission to give information

Every person is duty bound to give any information in his power relating to any offence or suspected offence of spying including those relating to its defence personnel on demand.\textsuperscript{145} Moreover every such person is bound to attend at such reasonable time and

\textsuperscript{139} Id, s.6(2)(b).
\textsuperscript{140} Ibid.
\textsuperscript{141} Ibid.
\textsuperscript{142} Id, s.6(2)(c); see also the Law Commission of India, \textit{op. cit.}, pp. 52-54,102 &103, the National Security Bill, 1971, cl.35.
\textsuperscript{143} Id, s.7(1).
\textsuperscript{144} Id, s.7(2); see also the Law Commission of India, \textit{op. cit.}, pp. 54 and 103, the National Security Bill, 1971, cl.36.
\textsuperscript{145} Id, s.8(1); a superintendent of police or other police officer not below the rank of Inspector, empowered by an Inspector General or Commissioner of police in this behalf or any member of the armed forces engaged on guard, sentry, patrol or other similar duty is said to be competent for this purpose.
place, specified, for the purpose of furnishing such information if so required by such personnel.\textsuperscript{146} Any person omitting to give any such information or to attend as aforesaid is punishable with imprisonment which may extent to three years and/or fine.\textsuperscript{147}

Harbouring spies

If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed any offence relating to spying, he commits an offence carrying a punishment of imprisonment which may extent to three years with or without fine.\textsuperscript{148} Equally punishable is the act of permitting such persons to meet or assemble in any premises in the occupation or control of the accused.\textsuperscript{149} Any omission on the part of the person so harbouring or permitting such persons to so meet or assemble, to give any information in his power relating to any such person or persons to such competent police officers on demand is yet another equally punishable offence.\textsuperscript{150}

Inchoate offences

Any attempt or abetment of any of the offences punishable under the Indian Official Secrets Act, 1923 is made punishable with the same punishment as the principal offence carries.\textsuperscript{151}

\textsuperscript{146} Ibid.
\textsuperscript{147} Id, s.8(2); see also the Law Commission of India, \textit{op. cit.}, pp.54, 55 and 103, the National Security Bill, 1971, cl.37.
\textsuperscript{148} Id, s.10(1) and (3); an offence relating to spying means any offence punishable under s.3 r/w s.9.
\textsuperscript{149} Id, s.10(1).
\textsuperscript{150} Id, s.10(2); see also the Law Commission of India, \textit{op. cit.}, pp. 55, 56, 103 and 104, the National Security Bill, 1971, cl.38.
\textsuperscript{151} Id, s.9; this section is suggested to be omitted. See the Law Commission of India, \textit{op. cit.}, p.55. Second part of 7.83 provides: "we are of the view that s.9 can be safely omitted. Abetment of an offence under the new law can be taken care of by the general provision in the Penal Code. So far as attempts are concerned many of the acts punishable under the penal sections, by their very terms, cover them."
2.22 Offences relating to terrorism

The Prevention of Terrorism Act, 2002 embodies the antiterrorism law. Earlier the Terrorist and Disruptive Activities (Prevention) Act, 1987, which was originally enacted for a duration of six years and extended by two years for combating terrorism got lapsed in 1995. The present statute has been enacted pursuant to the recommendation of the Law Commission of India.

Terrorist activities

Any act or thing by any person with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or the Government or any other person to do or abstain from doing in the following manner is called a terrorist act. Such act or thing must be done in such a manner as to cause or likely to cause death of or injuries to any person or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies. Moreover such act or thing must be done by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances, whether biological or otherwise, of hazardous nature.

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152 The extension of duration was effected by an amendment of s.1(4) substituting the words 'eight years' for the words 'six years' vide s.2 of the Terrorist and Disruptive Activities (Prevention) Amendment Act, 1993.
153 The Law Commission of India, 173rd Report on Prevention of Terrorism Bill, 2000. Since Parliament was not in session the law at first promulgated as ordinance which was called the Prevention of Terrorism Ordinance, 2001. In due course the present statute has been passed with certain changes and repealing the Ordinance.
154 The Prevention of Terrorism Act, 2002, s.3(1)(a).
155 Ibid.
nature or by any other means whatsoever.\textsuperscript{156} Similarly whoever detaining any person and threatening to kill or injure him for such purpose, in the same manner and with same intention, commits a terrorist act.\textsuperscript{157}

Being or continuing to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 and having in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and committing any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property constitute a terrorist act.\textsuperscript{158} Similarly any person voluntarily doing an act aiding or promoting in any manner the objects of such association and having in possession of any of the above mentioned things and committing any such act, commits a terrorist act.\textsuperscript{159} Any act of raising funds intended for the purpose of terrorism is also a terrorist act.\textsuperscript{160}

Any person committing a terrorist act resulting in the death of any person is punishable with death or imprisonment for life in addition to a mandatory fine.\textsuperscript{161} In any other case the person committing a terrorist act is punishable with imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life in addition to a mandatory fine.\textsuperscript{162}

The inchoate offences of terrorist act such as conspiracy, attempt, advocating, abetting, advising or inciting or knowingly facilitating the commission thereof are punishable with imprisonment for a term which shall not be less than five

\textsuperscript{156} \textit{Ibid.}
\textsuperscript{157} \textit{Ibid.}
\textsuperscript{158} \textit{Id.}, s.3(1)(b).
\textsuperscript{159} \textit{Ibid.}
\textsuperscript{160} \textit{Id.}, Explanation to s.3(1).
\textsuperscript{161} \textit{Id.}, s.3(2)(a).
\textsuperscript{162} \textit{Id.}, s.3(2)(b).
years but which may extend to imprisonment for life in addition to a mandatory fine.\textsuperscript{163} Equally punishable is the act preparatory to a terrorist act.\textsuperscript{164}

Any person voluntarily harbouring or concealing any terrorist with knowledge commits yet another offence of terrorist act.\textsuperscript{165} It carries the punishment of imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life in addition to fine in mandatory character.\textsuperscript{166} Equally punishable is the offence of attempt to harbour or conceal any such terrorist with knowledge.\textsuperscript{167}

Besides, being a member of a terrorist gang or terrorist organisation which is involved in terrorist acts is an offence. Any person who is such a member is punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.\textsuperscript{168} A terrorist organisation, for the purpose of this offence, means an organisation which is concerned with or involved in terrorism.\textsuperscript{169}

Holding with knowledge any property derived or obtained from commission of any terrorist act or acquired through the terrorist fund is also an offence. This offence is punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.\textsuperscript{170}

\textsuperscript{163} Id., s.3(3).
\textsuperscript{164} Ibid.
\textsuperscript{165} Id., s.3(4).
\textsuperscript{166} Ibid.
\textsuperscript{167} Ibid; proviso reads: “Provided that this sub-section shall not apply to any case in which the harbour or concealment is by the husband or wife of the offender.”
\textsuperscript{168} Id., s.3(5).
\textsuperscript{169} Id., s.3(5) Explanation.
\textsuperscript{170} Id., s.3(6).
Whoever threatens any person who is a witness or any other person in whom such witness may be interested, with violence or wrongfully restrains or confines the witness or any other person in whom the witness be interested or does any other unlawful act with the said intent commits an offence. It carries a punishment of imprisonment of imprisonment which may extend to three years and fine.\textsuperscript{171} 

Any person having in unauthorised possession of any particular arms or ammunition in a notified area is punishable with imprisonment for a term which may extend to imprisonment for life or with fine which may extend to rupees ten lakh or with both.\textsuperscript{172} Equally punishable is having in unauthorised possession of any bombs, dynamite or hazardous explosive substances or other lethal weapons capable of mass destruction or biological or chemical substances or warfare in any area whether notified or not.\textsuperscript{173} 

Holding or having in possession of any proceeds of terrorism is also an offence irrespective of whether it is held by a terrorist or by any other person and whether or not such person is prosecuted or convicted under this Act.\textsuperscript{174} Such proceeds of terrorism is liable to be forfeited to the Central Government or the State Government as the case may be.\textsuperscript{175} 

Any person contravening any provision of certain statutes with intent to aid any terrorist, is punishable with imprisonment for a term which may extend to imprisonment for life and a mandatory fine, notwithstanding anything contained in

\textsuperscript{171} Id., s.3(7). 
\textsuperscript{172} Id., s.4(a). Notified area means such area as the State Government may by notification in the official Gazette specify, as provided for in the Explanation to the section. Arms or ammunition mentioned are those specified in columns (2) and (3) of Category I or Category III (a) of Schedule I to the Arms Rules, 1962. 
\textsuperscript{173} Id., s.4(b); this penal provision has overriding effect over any other law as it contains the expression: "... notwithstanding anything contained in any other law for the time being in force..." 
\textsuperscript{174} Id., s.6(1) & (2). 
\textsuperscript{175} Id., s.6(2).
those statutes. For the purpose of this enhanced penalty any person who attempts to contravene or abets or does any act preparatory to the contravention of any provision of any law, rule or order is deemed to have contravened that provision.

Notwithstanding anything contained in any other law, the officer investigating any offence under this Act with prior approval in writing of an officer not below the rank of a superintendent of police may require any officer or authority of the Central Government or a State Government or a local authority or a bank or a company or a firm or any other institution, establishment, organisation or any individual to furnish information in their possession in relation to such offence, on points or matters where the investigating officer has reason to believe that such information will be useful for or relevant to the purposes of this Act. Failure to furnish the information so called for or deliberately furnishing false information is punishable with imprisonment which may extend to three years or with fine or with both.

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176 Id., s.5(1).; the Explosives Act, 1884, the Explosive Substances Act, 1908, the Inflammable Substances Act, 1952 and the Arms Act, 1959 are the statutes specified by this provision. Contravention of its provision and rules made thereunder results in such an enhanced penalty.

177 Id., s.5(2).

178 Id., s.14(1).

179 Id., s.14(2).