

LAW COMMISSION OF INDIA

ONE HUNDRED FIFTY - SIXTH

REPORT

ON

THE INDIAN PENAL CODE

(VOLUME II)

AUGUST, 1997.

ANNEXURES

ANNEXURE-I

QUESTIONNAIRE

ON

THE INDIAN PENAL CODE, 1860

Chapter I - General Explanations

1. Omission of definition of words "Gender", "Number" and "Person" under Sections 8, 9 and 11

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 5 of the Indian Penal Code (Amendment) Bill, 1978 that Sections 8, 9 and 11 which define the terms 'Gender', 'Number', 'Person' be omitted in view of identical definitions in the General Clauses Act, 1897?

2. Incorporation of new definition of "Election" under Section 13

Do you agree that the word 'election' be defined to mean an election by whatever means held under any law for the purpose of choosing members of any Legislature, local authority or other public authority as provided in Clause 6 of the Indian Penal Code (Amendment) Bill, 1978?

3. Omission of the definition of "Servant of Government" under Section 14

Do you agree that the definition of the words "Servant of Government" occurring under Section 14 be omitted in view of the fact that such expression does not occur in any other section of the Indian Penal Code, 1860?

4. Omission of definition of "Government" under Section 17

Do you agree that the definition of the word "Government" as defined in Section 17(b) be omitted in view of the definition of the word "Government" in Section 3(23) of the General Clauses Act?

5. Amendment of definition of "India" under Section 18

Do you agree with the suggestion that the definition of the word "India" as defined in Section 18 of the Indian Penal Code be amended as follows:

"The word 'India' wherever it occurs in this Code, means the territories to which this Code extends."

in order to make it clear that the Code extends to the territorial waters of India as it extends to land territory and internal waters of India, as provided in Clause 9 of the Indian Penal Code (Amendment Bill) 1978?

6. Amendment of the definition of the word "Judge" under Section 19

Do you agree that the word "Judge" under Section 19

be amended in view of the difficulty in interpretation of the words "any legal proceedings" and "definitive judgment", if yes, then who are all the persons/authorities to be included in the said definition?

7. Amendment of the definition of the expression "court of Justice" under Section 20

Do you agree that the definition of the words "Court of Justice" as defined in Section 20 of the Indian Penal Code be amended in view of the fact that the word "judge" has comprehensively been defined and there is no need for repeating the same in Section 20? It is felt that it is sufficient to indicate in the definition that it is only when the Judge or body of Judges is acting judicially that he or it is to be regarded as Court of Justice for the purpose of the Court. Thus, an Executive Magistrate, while functioning judicially under the Code of Criminal Procedure, will be a Court of Justice but not when he is performing an executive or administrative function under the Code or some other law.

Do you suggest the "Court of Justice" be also amended as follows:

"Court of Justice means a Judge or body of Judges when acting judicially"

as recommended by the Law Commission of India in its 42nd Report on Indian Penal Code and as provided in Clause 9 of the Indian Penal Code (Amendment) Bill 1978?

8. Amendment of the definition of public servant under Section 21.

Do you agree that Section 21 be amended in view of considerable overlapping, particularly after the recasting of clause twelfth by the amending Acts of 1958 and 1964 and also in view of the fact that some clauses require drastic revision in the following manner:

"Public servant" means,--

- (i) any person in the service or pay of the Government, or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation owned or controlled by the Government;
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of a body of persons, any adjudicatory functions;
- (v) any person specially authorised by a Court of Justice to perform any duty in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such Court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a Court of Justice or by a competent authority;
- (vii) any person employed or engaged as an examiner or as an invigilator by any public body in connection with any examination recognised or approved by or

under any law.

Explanation,--The expression "public body", includes--

(a) a University, Board of Education or other body or institution, either established by or under a Central, State or Provincial Act or constituted by the Government;

(b) a local authority;

(viii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election; or

(ix) any person who holds an office by virtue of which he is authorised or required by law to perform any public duty.

Explanation 1.--Persons falling under any of the above clauses are public servants whether appointed by the Government or not,

Explanation 2.--A person falling under any of the above clauses by virtue of any office or situation he is actually holding is a public servant, whatever legal defect there may be in his right to hold that office or situation

as provided in clause 9 of the Indian Penal Code (Amendment) Bill, 1978?

9. Insertion of new definition of "State" under section 21A

Do you agree that the word "State" be defined to mean "as State in India and includes a Union Territory" as provided in clause 9 of the Indian Penal Code (Amendment) Bill 1978?

10. Amendment of the definition of "fraudulently" under Section 25

Do you agree that the definition of the word "fraudulently" is very unsatisfactory, if at all it can be called a definition at all by one which will atleast state the essential requirements as pointed out by the Supreme Court in Dr. Vimla v. Delhi Administration (1963 Suppl. 2 S.C.R. 585 and Dr. S. Dutt V State of UP (1966) 1 SCR 493, 502 and furnish a guideline in doubtful cases? It is felt that in such a definition, it would obviously be not sufficient to relate the second element to the deceiver's intention to obtain an undue benefit or advantage to himself by means of the deceit. To constitute culpable fraud there should either be an intention to cause by the deception injury in the wide sense to someone or, at any rate, an intention to induce the person deceived to act to his disadvantage. In view of this do you agree that Section 25 be amended in the following manner as provided in clause 10 of the Indian Penal Code (Amendment) Bill 1978?

A person is said to do a thing "fraudulently" if he does that thing with intent to deceive another and,

by such deceit, either to cause injury or damage to body, mind, reputation or property of any person or to induce any person to act to his disadvantage.

11. Amendment of the definition of Document under Section 29.

Do you agree with the suggestion of the Law Commission of India in its 42nd Report on the Indian Penal Code that in view of the holding of the Supreme Court in *Pratap Singh Kairon* (1964) 4 SCR 733; AIR 1964 SC 72, 86, para 15 that a conversation recorded on a tape is good evidence, and obviously, if a person forges a tape record, he ought to be punishable the same way as a person preparing a false document, there should be an insertion in the form of illustration to Section 29 and deletion of some illustrations given in Section 29?

12. Omission of definitions of words "A will", "illegal omission", "Act/Omission" under Sections 31, 32 and 33

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 12 of the Indian Penal Code (Amendment) Bill, 1978 that Section 31 which defines the term 'will', Section 32 which

merely says that 'act' includes illegal omissions and section 33 which defines the words "act/omission" be omitted in view of identical definition in the General Clauses Act, 1897?

13.(i) Amendment of Sections 34 and 149: Common intention: common object

Whether Sections 34 and 149 be amended to make a single accused also be constructively liable ultimately of an offence, when even though such an accused was charged along with other accused, but who are acquitted, if the court finds that such single accused along with one or more accused conjointly committed the offence in view of the fact that where accused are tried constructively by application of section 34 or 149 and where some of them are acquitted on some ground or the other, the remaining whose participation conjointly though established, are also being acquitted on the simple ground that requisite number of such accused is less than two or five?

(ii). Amendment of Sections 34, 35 and 38;Provisions related to Acts done by several persons in furtherance of common intention.

Do you agree that in view of the holding of the Apex Court in the case of B.N.Srikantiah v. State of Mysore, AIR 1958 SC 672 and the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 13 of Indian

Penal Code (Amendment) Bill, 1978 for the words "several persons" wherever they occur in sections 34, 35 and 38, the words "two or more persons" be substituted?

14. Substitution of new section for the definition of "offence" in Section 40

Do you agree that the definition of the word 'offence' as defined in Section 40 be omitted in view of the definition given in the General Clauses Act, 1897 and further that the Section be substituted with the definition of the word "capital offence", namely -

"40. "Capital offence" means an offence for which death is one of the punishments provided by law"; as recommended by Law Commission in its 42nd Report on Indian Penal Code and Clause 14 of the Indian Penal Code (Amendment) Bill, 1978"?

15. Substitution of new Section for the definition of words "Illegal"/legally bound to do in Section 43

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal code and Clause 15 of the Indian Penal Code (Amendment) Bill, 1978 and also keeping in mind the substitution of the definition of 'offence' in Section 40 of the Penal Code, that for Section 43 of the Penal Code the following Section be substituted:-

"43(1) A thing is illegal if it is an offence, or is prohibited by law, or furnishes ground for a civil action.

(2) A person is "legally bound to do a thing when he is bound by law to do that thing or when it is illegal in him to omit to do that thing"?

16. Omission of the definition of words 'vessel', 'year'/'month' and 'Section' under Sections 48, 49 and 50

Do you agree that the words "vessel", 'year'/"month" and "Section" as defined under Sections 48, 49 and 50 respectively be omitted in view of the definition of the same words in Section 3, clauses (63), (66), (35) and section 4 respectively of the General Clauses Act, 1897?

17. Substitution of the definition of words "Good faith" and "Harbour" under Sections 52 and 52A

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 17 of the Indian Penal Code (Amendment) Bill, 1978 that for Sections 52 and 52A of the Penal Code, the following Sections be substituted, namely -

"52. A thing is said to be done or believed in 'good faith' when it is done or believed honestly and with due care and attention.

52A. Harboring means giving shelter to a person, and includes supplying a person food, drink, money, clothes, arms, ammunition or means of conveyance, or assisting a person in any manner to evade apprehension."?

18. Amendment of Section 53: Punishments

Do you agree that as emphasised by the Supreme Court in a number of cases that while awarding punishment to a convict, the court should adopt the reformatory approach instead of awarding deterrent punishment wherever possible? so it is felt that the following new forms of punishment be introduced in the Penal Code in addition to or as alternative to imprisonment:-

- (a) community service;
- (b) disqualification from holding office;
- (c) order for payment of compensation;
- (d) public censure;

If you agree with the aforesaid view; (a) in your opinion, what should be the relevant factors which would also be required to be considered;

(b) What are the kinds of offences for which these punishments should be made applicable?;

(c) Whether, while awarding the punishment of community service, relevant factors such as age of the convict, nature of work, duration of work, remuneration, if any, payable to the convict, be also considered?;

(d) Whether the amount of compensation should take any limitation; and

(e) Should the victim be compensated by the same court instead of compelling him to resort to civil proceedings for recovery of the same?

19. Omission of Sections 54, 55 and 55A: Commutation of sentence of death and of imprisonment for life, definition of "Appropriate Government"

Do you agree with the recommendations of the Law Commission in its 41st Report on Code of Criminal Procedure, 1898, 42nd Report on Indian Penal Code and Clause 19 of the Indian Penal code (Amendment) Bill, 1978 that Sections 54, 55 and 55A which deal with the provisions of "commutation of sentence of death", "imprisonment for life" and "definition of appropriate government" respectively be omitted in view of identical provisions in Sections 432 to 435 of Code of Criminal Procedure, 1973?

20. Amendment of Section 57 : Fractions of terms of punishment

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 20 of the Indian Penal Code (Amendment) Bill, 1978 that in

Section 57 of the Penal Code for the words "imprisonment for 20 years", the words "rigorous imprisonment for 20 years" be substituted?

21. Substitution of new Section for sections 64 and 65 :
Sentence of imprisonment for non-payment of fine and
limit to imprisonment

Do you agree with the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 21 of Indian Penal Code (Amendment) Bill, 1978 that for Sections 64 and 65 of the Penal Code, the following Sections be substituted:-

"64. In every case in which an offender is sentenced to a fine, it shall be competent to the court to direct by the sentence that, in default of payment of the fine, the offender shall undergo imprisonment for a certain term.

"65. In every case in which the offence is punishable with imprisonment or fine, or with imprisonment and fine-

(a) the imprisonment in default of payment of the fine may be of any description to which the offender might have been sentenced for the offence;

(b) the term of such imprisonment shall not exceed one-fourth of the maximum

term of imprisonment provided for the offence;

(c) such imprisonment shall be in addition to the imprisonment, if any to which he may have been sentenced for the offence or to which he may be liable under a commutation of a sentence."?

22. Omission of Section 66 : Description of imprisonment for non-payment of fine

Do you agree that in view of the recommendation of Clause 22 of the Indian Penal Code (Amendment) Bill, 1978 that Section 66 of the Penal Code be omitted though the Law Commission in its 42nd Report on Indian Penal Code has not recommended for omission but only for amendment of said Section 66 ?

23. Substitution of new Sections for Sections 67 and 68 : Imprisonment to terminate on payment of fine and imprisonment for non-payment of fine, when offence punishable with fine only

Do you agree that (a) the word "levied" in both the Sections do not give clear meaning? Therefore, these words be replaced by the word "realised"; (b) as recommended by the Law Commission in its 42nd Report on Indian Penal Code and Clause 23 of Indian Penal Code (Amendment) Bill, 1978 that

the amount of fine given under section 67 of the Code be increased; (c) the provisions regarding imprisonment to terminate on payment of fine required to be made more clear under section 68; further the provisions of section 69 of the Penal Code also be included under Section 68?

24. Omission of Section 69 : Termination of imprisonment on payment of proportional part of fine

Do you agree that in view of the amendment in section 68 of the Penal Code and the recommendations of the Law Commission in its 42nd Report on Indian Penal Code and Clause 24 of Indian Penal Code (Amendment) Bill, 1978 that Section 69 of the Penal Code be omitted?

25. Substitution of Section 70, 71 and 72 : Fine leviable within six years, or during imprisonment/death not to discharge property from liability; limit of punishment of offence made up of several offences and punishment of person guilty of several offences etc.

Do you agree that in view of the decisions/views of various High Courts and of the Supreme Court on Sections 70 to 72 which deal the provisions "Fine levied within six years or during imprisonment-Death not to discharge property from liability", "Limit of punishment of offence made up of several offences" and "Punishment of person guilty of one of

several offences, the Judgment stating that it is doubtful of which" that the wording of these sections is not unambiguous and needs amendment as recommended by Law Commission in its 42nd Report and Clause 25 of Indian Penal Code (Amendment) Bill 1978 to make the provisions simple and clear?

26. Substitution of Sections 73 and 74 : Solitary confinement and its limit

Do you agree that punishment of solitary confinement is out of tune with modern thinking, therefore, it be deleted from the Penal Code?

27. Amendment of Section 75: Enhanced punishment for certain offences under Chapter XII or Chapter XVII after previous conviction

Do you think that Section 75 should be extended to cover all offences under the Code which are punishable with imprisonment upto three years or more?

28. Amendment of Section 94 : Act to which a person is compelled by threats

Do you think it is necessary to redraft Section 94 to include harm to near relatives like parents, spouse, son or

daughter and that a person threatened with such harm be permitted to plead duress as an excuse in the same way as a person threatened with death?

29. Constructive Liability of Companies : Insertion of section 94A and 94B:

Do you think that the Company and the Board of Directors or the persons responsible for the conduct of the affairs of the company should be constructively be made liable for offences committed in furtherance of the affairs of the company by an employee thereof by adding new Sections 94A, 94B as provided in the Bill?

30. Amendment/Modification/Deletion of Section 99 : Acts against which there is no right of private defence etc.

Do you think that the third paragraph in Section 99 debarring the right of private defence in cases in which there is a time to have recourse to the public authorities should be removed or should be modified and if so, how?

31. Amendment of Section 100 : when the right of private defence of the body extends to causing death

Whether it is necessary to limit the 5th paragraph, under section 100 of the Penal Code only to cases where the abduction is punishable under the Code as proposed in the Bill or the present 5th paragraph as such is to be retained?

32. Amendment of Section 101

Should Section 101 be amended by adding the words "or the involuntary causing death to the assailant" in the end, so that those cases where the death is caused, but not voluntarily, like rash and negligent act could also be included.

33. Amendment of Section 103: When the right of private defence of property extends to causing death.

Whether it is necessary to substitute the words "criminal trespass" for 'house trespass' so as to include hijacking of aircraft or sabotage under clause 4 of Section 103 and whether clause 2, namely, 'house breaking by night' can be omitted?

34. Amendment of Section 105: Commencement and continuance of the right of private defence of property.

In the light of the proposed amendments to Sections 99 and 103, do you suggest any changes in Section 105?

35. Amendment of Section 108 & 108A: Abettor and Abetment in India of offences outside India.

It is proposed in the Indian Penal Code (Amendment) Bill, 1978 that for Sections 108 and 108A, the following Sections shall be substituted, namely:-

"108(1). A person abets an offence, who abets the doing of a thing which is that offence or which would be an offence if done by a person capable by law of committing that offence with the same intention or knowledge as that of the abettor (See Clause 38 of the Bill)".

What are your views?

36. Amendment of Sections 115 and 116: Punishment for abetment.

Do you think that the punishment under Sections 115 and 116 for unsuccessful abetment of offences should be more rigorous?

37. Insertion of Section 117A for abetment by a child under 15 years of age.

Whether a new Section 117A should be inserted to cover the abetment of commission of offence by a child under 15 years of age?

38. Amendment of Section 119: Public servant concealing design to commit offence which it is his duty to prevent etc. punishment.

Do you think that it is necessary that the 3rd, 4th and 5th paragraphs in Section 119 should be substituted by providing a severe punishment in cases where capital offences are being committed and also in cases where capital offences are not committed, but where there was a failure on the part of the public servant to prevent or where there was a facilitation by him?

39. Insertion of new chapter VB, 'Attempts' & 'Punishment':

Do you agree that the word "Attempt" be defined and Punishment for it should be prescribed in view of the holding of the Supreme Court in Abhayanand v. State of Bihar (1962) 2 S.C.R. 241, the recommendation of the Law Commission in its 42nd Report on Indian Penal Code and Clause 45 of Indian Penal Code (Amendment Bill), 1978 that after Chapter VA of the Penal Code, the following Chapter VB be incorporated?

"Chapter V B

ATTEMPTS

40. 120C A person attempts to commit an offence, when -
(a) he, with the intention or knowledge requisite for committing it, does any act towards its commission;

(b) the act so done is closely connected with, and proximate to, the commission of the offence; and

(c) that act fails in its object because of facts not known to him or because of circumstances beyond his control.
41. 120D. Whoever is guilty of an attempt to commit an offence punishable with imprisonment for life or with imprisonment for specified term, shall, where no express provision is made for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case maybe, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence or with both."
42. Amendment of Sections 122 and 123: Collecting arms etc. with intention of waging war against government of India and concealing with intent to facilitate design to wage war.

Do you agree with the recommendation of the Law

Commission in its 42nd Report on Indian Penal Code and Clause 46 of the Indian Penal Code (Amendment) Bill, 1978 that in view of grave nature of offence affecting the security of the State for the words "imprisonment of either description" the words 'rigorous imprisonment' be substituted under Sections 122 and 123 of the Indian Penal Code?

43. Insertion of new section 123A: To assist an enemy etc.

Do you agree with the recommendation of the Law Commission in its 42nd report on Indian Penal Code and Clause 47 of the Indian Penal Code (Amendment) Bill, 1978 that after Section 123 of the Penal Code the following section be inserted namely?-

"123A. Whoever assists in any manner an enemy at war with India, or the armed forces of any country against whom the armed forces of India are engaged in hostilities, whether or not a state of war exists between that country and India, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

44. Substitution of new section for section 124: Seditious :

Do you agree that in view of the holding of the

Supreme Court in Kedar Nath Singh v. State of Bihar, S.C.R. (1962) Suppl. P.808, the following sections be substituted, namely -

"124A Whoever by words, either spoken or written, or signs, or by visible representations, or otherwise.

excites, or attempts to excite, disaffection towards the Constitution, or the Government or Parliament of India, or the Government or Legislature of any State, or the administration of justice, as by law established,

intending or knowing it to be likely thereby to endanger the integrity or security of India, or of any State, or to cause public disorder, shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to three years, and shall also be liable to fine.

124B. Whoever deliberately insults the Constitution of India or any part thereof, the national flag, the national emblem or the national anthem, by burning, desecration or otherwise, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."; as recommended by Law Commission in its 42nd Report on Indian Penal Code and Clause 48 of the Indian Penal Code (Amendment) Bill, 1978?

45. Amendment of Section 125 and 126: Waging war etc and committing depredation on territories of Power at peace with the Government of India.

Do you agree with the recommendation of the Law Commission in its 42nd Report on Indian Penal Code and Clauses 49 and 50 of the Indian Penal Code (Amendment) Bill, 1978 that under Sections 125 and 126 of the Penal Code, for the words "any Asiatic Power in alliance or at peace with the Government of India" being irrelevant, the words "any foreign state at peace with India" be substituted?

46. Amendment of Sections 128, 129 and 130: Offences committed by Public Servants etc.

Do you agree that since "the State Prisoners Regulations" of three Presidencies made early in the last century have been repealed in 1952 and in view of the recommendation of Law Commission, 42nd Report, and Clause 51 of Indian Penal Code(Amendment)Bill, 1978 that under Sections 128, 129 and 130 of the Penal Code, the words "state Prisoner or" wherever they occur, be omitted?

47. Amendment of Section 161:Public servant.

Do you agree that the words "public servant" should be specifically defined within the ambit of section 161 IPC?

Are the words "public servant" to be made applicable to local authorities or corporations, owned or controlled by the Government?

48. Insertion of new Section 153C: Statement intending to cause offences against public tranquility.

Whether a new section 153C be inserted in the Indian Penal Code in order to curb a recent increase in the activity of promoting enmity, hatred or ill-will between different groups on grounds of religion, race, language, caste or community which requires to be dealt with in a stern manner and whether such step will help in curbing violence on the aforesaid grounds?

49. Amendment of Section 171G: Elections etc.

The commission/omission of corrupt practices in the elections are punishable under the Representation of People's Act. Do you suggest for the same offences being made punishable simultaneously under provisions of the IPC, particularly with reference to section 171G of the IPC?

50. Insertion of new Section 166-A

There appears to be a general tendency on the part of the Police Officers to direct the witnesses of the crime to attend at places in violation of Section 160 of the Code of Criminal Procedure, 1973. The Law Commission of India in its 135th Report on "Women in Custody" recommended for insertion

of new Section 166A in the Indian Penal Code, 1860 for punishing the violation of Section 160 of the Cr.P.C., and making the proposed offence cognizable, bailable and triable by any Magistrate. Should such a provision be inserted in the Indian Penal Code for curbing the tendency to violate the provisions of Section 160 of Cr.P.C.?

51. Insertion of new Section 167A: Public servants maliciously authorising payment in respect of contracts where the goods supplied or work done is not in accordance with the contract.

Whether a new section 167A be inserted in IPC to punish a public servant who authorises payment on behalf of Government or other public authority for goods supplied or work done under any contract when he knows that the goods or works are not in accordance with the contract in view of the fact that public servants maliciously authorise payment in respect of contracts where the goods supplied or work done is not in accordance with the contract?

52. Insertion of new Section 167-B

Complaints against Police Officers not to record the First Information Report at the police station, even though there is prima facie evidence of the commission of the cognizable offence have oftenly been made. Under the existing law, there is no provision for taking penal action against the police officers for their refusal to record information as contemplated by Section 154(1) of the Cr.P.C.

The Law Commission in its 84th Report on "Rape and Allied Offences", and in its 152nd Report on "Custodial Crimes" also observed that the remedy available under sub-section (3) of Section 154 of the Cr.P.C. is not effective and adequate. It, therefore, recommended for enactment of a new Section 167B in the Indian Penal Code, making the failure to record the FIR by officer in-charge of a police station, punishable with imprisonment for a term which may extend to one year or with fine or with both. In order to discourage or prevent the malpractice of refusing to register information relating to commission of cognizable offences, it needs to be deliberated, besides the aforesaid measures, of insertion of a new Section 167B on the aforesaid lines, what other suitable measures can be taken up for curbing the aforesaid malpractice?

53. Omission of Section 228:

Since the jury system has been abolished in our country, do you suggest for deletion of section 228 IPC?

54. Omission of Sections 246 & 254: Coins etc.

In the yore, the metal used in the coins was very valuable. Therefore, people were trying to alter the composition and shape of the coin. Of late the metal being used in coins is not that much valuable. Therefore, do you suggest for the deletion of sections 246 and 254 of the IPC?

55. Insertion of new Section 198-A: Issuing or signing false medical certificate.

Whether it should be provided in the Indian Penal Code that any medical practitioner who knowingly issues any false medical certificate or certificate of fitness and any person who corruptly uses it as a true certificate should be punishable in order to check the growing malpractice of issuing and using false medical certificate, (e.g. Doctors seen outside M.V. authorises to give certificates to new applicants). If so, whether there should be different punishments for a certificate used in judicial proceedings and for other purposes?

56. Amendment of Section 270: Malignant act likely to spread infection of disease dangerous to life.

Do you agree with the recommendation of Law Commission in its 42nd Report on Indian Penal Code and clause 114 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 270 of the Penal Code (a) for the word 'malignantly' the word 'wilfully' be substituted, and (b) for the words 'two years', the words 'three years' be substituted?

57. Amendment of Sections 272 to 276: Offences of adulteration.

Do you agree that the sentence provided in Sections 272 to 276 of the Penal Code dealing with the anti-social and reprehensible offences of adulteration of food, drinks and drugs, be enhanced in view of recommendations of Law

Commission in its 42nd Report and clause 115 of the Indian Penal Code (Amendment) Bill, 1978 and of the provisions of Section 16 of the Food Adulteration Act, 1954 and also of U.P. Act No.47 of 1975 and West Bengal Act No.42 of 1973 and if so, what should be the quantum of punishment?

58. Amendment of Section 277

Do you agree with the recommendation of Law Commission in its 42nd Report on the Indian Penal Code and clause 116 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 277 of the Penal Code for the words - (a) "or reservoir", the words "well, reservoir or any other source of supply of water" be substituted; and (b) for the words "three months or with fine which may extend to five hundred rupees", the words "one year or with fine" be substituted?

59. Insertion of new Section 279A

Do you agree with the recommendation of Law Commission in its 42nd Report on Indian Penal Code and clause 119 of the Indian Penal Code (Amendment) Bill, 1978 that a new section 179A for "driving unsafe or overloaded vehicle on a public way" be inserted as under:-

"279A. Whoever knowingly or negligently drives or permits any person to drive any vehicle on a public way when that vehicle is in such a state or so loaded as to endanger life, shall be punished with imprisonment of either description for a term which

may extend to six months, or with fine, or with both.

Explanation. - In this section -

(a) "vehicle" includes any vessel; and

(b) "public way" includes any public water-way.

or in view of the provisions of Sections 184, 190 and 194 of Motor Vehicles Act, 1988, there is no requirement of inserting the above mentioned section in the Penal Code?

60. Amendment of Section 292

Do you agree that in Section 292 of the Penal Code, which deals with sale etc., of obscene books etc., a new sub-section (3) be added for admission of expert evidence in the following words, namely, -

"(3) Where, in any prosecution under this section, the question is whether the publication of any book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other object of general concern, the opinion of experts as to its scientific, literary, artistic, academic or other merit may be admitted in evidence.";

as recommended by Law Commission in its 42nd Report on Indian Penal Code and clause 122 of the Indian Penal Code (Amendment) Bill, 1978 ?

61. Insertion of new Section 292A: Printing etc. of grossly indecent or scurrilous matter or matters intended for blackmail.

In order to check the menace of blackmail by publication of scurrilous or grossly indecent matter in the media whether it is necessary to insert a new Section 292A to cover printing, exhibition, distribution, circulation of any picture or any printed or written document which is grossly indecent or scurrilous or intended to blackmail, etc. or sale or conveyance or doing business in printing or circulation, etc. or advertise or attempt to do any such act also being punishable?

62. Insertion of new sections 294A and 294B: Offence related to lotteries.

Whether new sections 294A and 294B should be expanded so as to cover all lotteries promoted or proposed to be promoted in India or elsewhere and to cover the acts of printing, sale, distribution, advertisement, etc.?

63. Amendment in sections 299 and 300: Culpable homicide and murder.

Do you suggest any changes in sections 299 and 300 to have a clearer definition of culpable homicide and murder?

64. Amendment of section 302B

Whether section 302B should be made more explanatory mentioning in what cases death sentences should be awarded or whether it is better to leave it to the discretion of the court on the concept of 'rarest of rare cases'?

65. Insertion of new section 304B

Whether a new section 304B has to be inserted to make the drivers who drive or runaway without informing any police station within a reasonable time?

66. Amendment of sections 307 and 308:Attempt to murder etc. attempt to commit culpable homicide.

Do you suggest any changes in sections 307 and 308? Should there be severe punishment if hurt is caused?

67. Omission of section 309:Attempt to commit suicide

Do you agree that section 309 be omitted?

68. Amendment of section 320: Grievous hurt.

Do you suggest any changes in section 320? Whether in para 8, the period of 20 days can be reduced to 15 days?

69. Insertion of new Section 354A: Assault on a minor.

Do you agree with the holding of Supreme Court in a case of State of Punjab Vs. Major Singh, AIR, 1967, Supreme

Court, pp.63, 65, 67, that indecent assault on children be an offence? Therefore, in view of the above holding and recommendation of Law Commission in its 42nd Report on Indian Penal Code and clause 146 of the Indian Penal Code (Amendment) Bill, 1978, a new Section 354A for the "indecent assault on a minor" be inserted in the following words:-

"354A. Whoever assaults or uses criminal force to any minor under sixteen years of age in an indecent lascivious or obscene manner, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

70. Amendment of Section 356: Assault on criminal force.

Do you agree with the recommendation of Law Commission in its 42nd Report on Indian Penal Code and clause 147 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 356 of the Penal Code for the words "on any property", the words "of any property" be substituted.

71. Amendment of Section 361:Kidnapping from lawful guardianship.

Do you agree with the recommendation of Law Commission in its 42nd Report on Indian Penal Code and clause 148 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 361 of the Penal Code (a) for the explanation the following explanation be substituted, namely, -

"Explanation. - In this Section, the expression

'lawful guardian' includes 'any person who has lawful custody of a minor or of a person of unsound mind';

(b) In the exception, for the word "unlawful", the word "illegal" be substituted.

72. Amendment of Section 362: Abduction.

Do you agree that the definition of the word 'abduction' given under Section 362 is not clear and wide enough to cover the definition of the said offence and the cases of "hijacking of aircraft and vehicles" in recent past have been increasing in parts of our country ridden with terrorism, should be made punishable under the Penal Code? In your opinion should there be uniform punishment for both the offences or should it vary according to the gravity of the offence and be deterrent punishment in case of hijacking of an aircraft on board, or in flight? Please comment.

73. Insertion of new Section 364A: Kidnapping on abduction for ransom.

Do you agree that the quantum of punishment for "kidnapping or abduction for ransom should be more than the offences given under Section 364 of the Indian Penal Code? If yes, then a new section as recommended by Law Commission in its 42nd Report on Indian Penal Code and clause 151 of the Indian Penal Code (Amendment) Bill, 1978, be inserted in the following words:-

"364A. Whoever kidnaps or abducts any person in order that such person may be held to ransom shall be

punished with rigorous imprisonment for a term which may extend to fourteen years, and shall also be liable to fine."

74. Substitution of new Section for Section 362:
Abduction

(a) Do you agree that the definition of abduction be expanded to include taking any persons away from any place without the consent of that person or some persons legally authorised to consent on behalf of that person as provided in clause 149 of the IPC Amendment Bill, 1978?

(b) Do you agree that abduction per se irrespective of the motive for such abduction be made punishable under the IPC?

75. Insertion of new Section 364A:Abduction for ransom

IPC does not include abduction for ransom as an offence. National Crimes Record Bureau has reported that abduction including those for ransom has recorded a rise of 43.3% between 1983 and 1993. In view of this do you agree that abduction for ransom be incorporated as an offence as provided in clause 151 (S.364A) of the IPC Amendment Bill, 1978?

76. Substitution of new Section for Section 368: Wrongful concealing of kidnapped or abducted person.

Do you agree that a specific punishment for the above offence be provided as provided in Clause 155 of IPC Amendment Bill, 1978; 'rigorous imprisonment upto 7 years and fine'.

77. Amendment of Section 369: Kidnapping or abduction of a child to steal from its person.

Do you agree that for the above offence, a minimum punishment be prescribed? If so, what should be the quantum? In clause 156 of IPC Amendment Bill, 1978 minimum punishment of two years is prescribed.

78. Amendment of Section 373: 'Buying, hiring, or obtaining possession of a minor for prostitution or illicit intercourse or for any unlawful or immoral purposes.

Do you agree for insertion of Explanation III to Section 373 in view of conflict of opinion between different High Courts and as suggested by the Law Commission in its 42nd Report and as mentioned under clause 158 of the IPC Amendment Bill, 1978 which reads as under :

Explanation III : For the purposes of this Section, it is not necessary that the possession of the minor should have been obtained from a third person.

79. Amendment of Section 375: Rape.

Do you agree that in para 'sixthly', for the words 'sixteen years', the words 'eighteen years' be substituted, and in Exception for the words 'fifteen years', the words 'seventeen years' should be substituted. In view of the fact that while the minimum age for girls was raised to eighteen years by amending the Child Marriage Restraint Act, 1929, age of consent for sexual intercourse under the existing law has remained fixed at sixteen, and in case of wife, fifteen years.

80. Substitution of new Sections for Section 376: Punishment for rape.

(a) Do you agree that in subsection (1) of Section 376 punishment for rape be increased from two years to five years and in subsection (2) of section 376 from a minimum punishment of ten years to punishment of rigorous imprisonment for life.

(b) Do you agree for substitution in subsection (2) of section 376 for the portion beginning with the words "shall be punished" and ending with the words "liable to fine" the following :-

"shall be punished with rigorous imprisonment for life and shall also be liable to fine."

(c) Do you agree that for the proviso to Section 376, following proviso be substituted, namely,

"provided that in the cases covered by clauses (a) to (g), the Court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term not less than two years.

(d) Do you agree that owing to the increase in the incidence of child rape a new section on child rape in the Indian Penal Code namely, subsection (3) be inserted in section 376 which reads as follows :

"(3) Whoever commits rape on a woman when she is under twelve years of age, shall be punished with rigorous imprisonment for a term which shall not be less than ten years and shall also be liable to fine : Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than ten years."

81. Insertion of new Section 376E after Section 376A to 376D offences against children. -

(a) Do you agree to the incorporation of Section 376E which reads as follows :-

"376E- Whoever commits an offence under sections 376A to 376D (both inclusive) shall if the woman is under eighteen years of age, be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

It is proposed to incorporate a new section on the offence of the eve-teasing and its punishment :

(b) Do you agree that the following sections be incorporated ?

376F. Offence of eve-teasing.

Whoever intending to annoy any woman utters any word or makes any sound or gesture or exhibits any object or does any other act in any public place intending that such word or sound shall be heard or that such gesture or object shall be seen or that such act shall be noticed or felt by such woman, commits the offence of eve-teasing.

82. Insertion of new Section 376G: Punishment for eve-teasing.

Whoever commits the offence of eve-teasing shall be punished with imprisonment of either description for a term which may extend to five years and shall also be liable to fine.

83. Insertion of new Section 376H: Sexual harassment of women at work place.

(a) Do you agree that a new section on "Sexual harassment of women at work place", namely, section 376H be incorporated in the Indian Penal Code in the following manner:

"Whoever sexually harasses a woman at work place shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

(b) What should be the meaning of "sexual harassment" for the purposes of this section for an Explanation to be added ?

84. Section 377: Unnatural offences.

(a) Do you agree that the following Clause 160 of the Amendment Bill be substituted for section 377 as suggested by the Law Commission in its 42nd Report :

377. Whoever voluntarily has carnal intercourse against the order of nature with any man or woman shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and where such offence is committed by a person over eighteen years of age with a person under that age the imprisonment may extend

to seven years.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

(b) Do you agree that a minimum punishment of imprisonment not less than ten years be prescribed where the offence is committed by an adult on minors ?

(c) Should consensual adult homo-sexuality remain as an offence under IPC?

85. Amendment of section 380: Theft in dwelling house etc.

"Whether any change is necessary in section 380 to cover the theft of public property in a public place of worship, etc?"

86. Insertion of new section 380A

Whether a new section 380A can be inserted to make the theft from the possession of a person who was a victim of calamity like fire, accident, earthquake, etc. and whether such a theft should be treated as an aggravated one?

87. Amendment of section 381: Theft by clerk or servant of property in possession of Master.

Whether section 381 should be amended to cover the thefts committed by all employees not necessarily by clerks and servants, as you find in the present section?

88. Insertion of new section 381A

Whether section 381A can be inserted to cover cases where the culprit puts any person in a state of intoxication or unconscious by means of a drink or drug in order to commit theft of any property in possession of such a person?

89. Insertion of new section 385A: Extortion by putting dishonestly threatens by blackmail

Whether a new section 385A can be inserted to cover cases where the culprit dishonestly threatens by blackmail to commit extortion?

90. Amendment of section 396: Dacoity with murder

Whether section 396 requires amendments to make everyone of the persons conjointly committing dacoity liable and if one of them commits murder, everyone of such persons should be made liable and be punished with death or imprisonment for life or rigorous imprisonment may be extended upto ten years in the circumstances specified in the

clauses of the new proposed section 302?

Or, whether section 396 in its present form is enough to meet the situation?

91. Insertion of new section 399A:Making preparation to commit robbery

Whether a new section 399A can be inserted to make preparation for committing robbery also punishable?

92. Amendment of section 410:Stolen Property

Whether section 410 should be amended or to be substituted so that property obtained by cheating or misappropriation is also covered and whether the scope of the words 'stolen property' should be explained by way of an explanation?

93. Amendment of sections 411 and 414

Whether to sections 411 and 414 a further clause is to be added to make the offence in respect of the stolen property of the government or local authority or of a corporation, an aggravated one?

To make the definition of cheating clearer whether the words 'harm to any person' should be substituted by the words "harm to that person" as suggested in clause 177 of the Bill.

94. Insertion of new section 420A

The Law Commission in its 29th Report on "Proposal to include certain social and economic offences in the Indian Penal Code" considered how to tackle the problem of cheating government, corporation, local authority on a large scale by dishonest contractors. To combat this malady, it is recommended to insert a new section 420A. Whether any further changes are necessary in this context?

95. Insertion of new section 420B:Employees taking bribe in respect of affairs or business of employer or of person who engaged him

In order to curb the aforesaid act whether there should be a separate provision in the Penal Code providing for punishment for such an act. On the model of an English Statute, the Law Commission recommended a new Section 420B to cover the cases of taking bribe by private persons also in respect of employer's affairs or business. Your suggestions in this respect would be of great assistance?

96. Substitution of new Sections for sections 426 to 432:Mischief

Do you agree with the recommendation of the Law Commission in its 42nd report on Indian Penal Code and Clause 179 of the Indian Penal Code (Amendment) Bill, 1978 that for Sections 426 to 432 of the Penal Code, new Sections be substituted to make the offences of mischief more detailed and comprehensive and to increase the quantum of punishment? If so how?

97. Substitution of new sections for section 434 to 437:Mischief

Do you agree with the recommendation of Law Commission in its 42nd Report on Indian Penal Code ;and Clause 180 of the Indian Penal Code, (Amendment) Bill, 1978 that for sections 434 to 438 of the Penal Code, new sections be substituted, to make the provisions of offence 'Mischief' more clear and comprehensive and to enhance the quantum of punishment? If yes, what should be the quantum of punishment under different sections and what are all the provisions to be amended?

98. Substitution of new section for section 441:Criminal trespass

Do you agree that the definition of the word "Trespass" occurring under Section 441 of the Indian Penal Code be substituted by the following definitions in view of

the recommendation of the Law Commission in its 42nd Report on Indian penal code and Clause 181 of the Indian Penal Code (Amendment) Bill, 1978, namely -

"441. Whoever-

(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or

(b) having entered into or upon such property without such intent, unlawfully remains there with such intent, is said to commit criminal trespass".

99. Substitution of new sections for section 443 to:450:Of criminal trespass

Do you agree that for sections for section 443 to 450 of the Penal Code, the following sections be substituted to enhance the quantum of punishment and to define some offences to make them more clear, as recommended by the Law Commission in its 42nd report on Indian Penal Code and clause 182 of the Indian Penal Code (Amendment) Bill, 1978, namely-

"443. A person commits burglary, if-

(a) he commits house trespass in order to commit theft; or

(b) having committed house-trespass, he commits theft.

444. Whoever-

(a) commits house-trespass in order to commit any offence punishable with imprisonment for a term of seven years or upwards; or

(b) having committed house-trespass, commits any such offence as aforesaid,

shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

445. Whoever commits criminal trespass, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

446. Whoever commits house-trespass, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

447. Whoever commits house trespass, having made preparation -

(a) for causing hurt to, or assaulting or wrongfully restraining any person, or

(b) for putting any person in fear of hurt, assault or wrongful restraint,

shall be punished with imprisonment of either description for a term which may extend to seven years, and shall be liable to fine.

448. Whoever commits burglary, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

449. Whoever, whilst committing burglary or an offence under section 444,-

(a) causes grievous hurt to any person, or

(b) attempts to cause death or grievous hurt to any person.

shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

450. If at the time of committing the offence of burglary or an offence under section 444, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such offence shall be punished with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

100. Amendment of Section 464:Making of false document

Do you agree with recommendation of Law Commission in its 42nd report on Indian Penal Code and clause 184 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 464 of the Penal Code (a) in paragraph, first, after the words "at a time", the words "or place, when the time or place is material" be inserted; (b) in paragraph secondly, after the words "by cancellation", the words "addition, obliteration" be inserted?

101. Amendment of Section 465:Punishment for forgery

Do you agree that having regard to the gravity of the offence "Forgery" the punishment, maximum period of imprisonment provided under Section 465 of the Penal Code "two years" be substituted by "three years" as also recommended by Law Commission in its 42nd report on Indian Penal Code and Clause 185 of the Indian Penal Code (Amendment) Bill 1978?

102. Amendment of Section 466:Forgery of record of court or of public register etc.

Do you agree with the recommendation of Law Commission in its 42nd report on Indian Penal Code and Clause 186 of the Indian Penal Code (Amendment) Bill, 1978, that under Section 466 of the Penal Code (a) for the words "whoever forges a document, purporting to be", the words "whoever commits forgery in respect of a document which is, or purports to be", be substituted; (b) for the words "or

documents purporting to be made", the words "or document made" be substituted, (c) for the words "Seven Years", the words "Ten Years" be substituted.

103. Amendment of Section 467:Forgery of valuable security, will etc.

Do you agree with the recommendations of the Law Commission's 42nd report on Indian Penal Code and the amendment suggested in 1978 Bill that under Section 467 of the Penal Code -(a) for the words "Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person", the words "Whoever commits forgery in respect of a document which is, or purports to be, a valuable security or a will, or an authority to adopt a person or" shall be substituted; (b) for the words "or any document purporting to be an acquittance" shall be substituted; (c) the words "with imprisonment for life, or" shall be omitted.

104. Substitution of sections 470 and 471:Forged documents and using as genuine a forged document

Do you agree that for sections 470 and 471 of the Penal Code, the following sections be substituted as proposed in the clause 187 of the Indian Penal Code (Amendment) Bill, 1978 :-

"470. A document in respect of which, or any part of which, forgery has been committed is a forged document.

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document-

(a) shall, if the document is one of the description mentioned in section 467 be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine, and

(b) shall, in any other case, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both".

105. Amendment of Section 473

Do you agree with the recommendation of the Law Commission in its 42nd report on Indian Penal Code and Clause 189 or the Indian Penal Code (Amendment) Bill, 1978 that in Section 473 of the Indian Penal Code, for the words "seven years", the words "ten years" be substituted?

106. Substituted of Section 474

Do you agree with the suggestion of Law Commission in its 42nd report on Indian Penal Code and Clause 190 of the Indian Penal Code (Amendment) Bill 1978 that for Section 474 of the Penal Code, the following section be substituted, namely-

"474 Whoever has in his possession any document of the description mentioned in section 466 or section 467, knowing the same to be forged and intending that

the same shall fraudulently or dishonestly be used as genuine, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine."

107. Amendment of Section 476

Do you agree with the recommendation of Law Commission in its 42nd report on Indian Penal Code and Clause 191 of the Indian Penal Code (Amendment) Bill, 1978 that in Section 476 of the Penal Code, for the words "Seven years", the words "ten years" be substituted?

108. Amendment of Section 477

Do you agree with the recommendation of Law Commission in its 42nd report on Indian Penal Code and Clause 192 of the Indian Penal Code (Amendment) Bill 1978, that in Section 477 of the Penal Code (a) for the words "or an authority to adopt a son" "or an authority to adopt a person" be substituted, (b) the words "with imprisonment for life, or" be omitted; (c) for the words "seven years", the words "ten years" be substituted?

109. Amendment of Section 477

Do you agree with the suggestion of the Clause 193 of Indian Penal Code (Amendment) Bill, 1978, that in Section 477A of the Penal Code, for the words "being a clerk, officer

or servant, or employed or acting in the capacity of a clerk, officer or servant", the words "being employed in any capacity and acting in that capacity" be substituted?

110. Amendment of Section 489A

Do you agree with the suggestion of Law Commission in its 42nd report on Indian Penal Code and Clause 194 of the Indian Penal Code (Amendment) Bill 1978, that in Section 489A of the Penal Code (a) the Explanation shall be numbered as Explanation I and in the Explanation as so numbered, the words "and includes a traveller's cheque" shall be inserted at the end; (b) the following shall be inserted as explanation II, namely : "Explanation II. For the removal of doubt, it is hereby declared that in this section and in Sections 489 B, 489C, 489D and 489E, the expression "currency note" includes a foreign currency note.?"

111. Insertion of new Section 489F

Do you agree with the suggestion that a new provision to cover the offence of preparation for committing offences under Section 489A to 489E of the Penal Code and as provided in clause 196 of the IPC (Amendment) Bill, 1978, be inserted in the following manner_

"489F. Whoever makes any preparation for committing any offence punishable under section 489A to section 489E shall be punished with imprisonment for a term

which may extend to one-half of the imprisonment provided for that offence, or with fine, or with both."

112. Substitution of new Chapter for Chapter XIX:Offences against privacy

Do you agree that the "offence against privacy" in view of -people's quest for privacy as laid down by Supreme Court be substituted as new chapter for Chapter XIX (of the Criminal Branch of contracts of Service) being of no practical utility as recommended by the Law Commission in its 42nd Report and clause 197 of the IPC (Amendment) Bill, 1978 in the following manner-

Chapter XIX

Offences against Privacy

490.(1) Whoever, knowing that any artificial listening or recording apparatus has been introduced into or in the vicinity of any premises without the knowledge or consent of the person in possession of the premises, listens to any conversation with the aid of such apparatus or uses such apparatus for the purposes of recording any conversation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Whoever publishes any conversation or a record thereof, knowing that it was listened to or recorded with the aid of any artificial listening or recording apparatus introduced into or in the vicinity of any premises without the knowledge or consent of the person in possession of the premises, shall be punished with imprisonment of either description for a term which may extend to one year, or with both.

491. (1) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, takes, elsewhere than in a public place, a photograph of that person without his consent, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, intending to cause, or knowing it to be likely that he will cause, annoyance to any person, publishes any photograph of that person taken in contravention of sub-section (1) shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

(3) Whoever, takes a photograph of a place, building or thing knowing that the taking of such photograph is prohibited by a written notice affixed in such place, building or thing shall, except when the taking of such photograph is specifically authorised

or permitted by the owner or occupant of such place, building or thing, be published with simple imprisonment which may extend to six months, or with fine, with both.

(4) Whoever knowingly publishes any photograph taken in contravention of sub-section (3) shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

492. Nothing in section 490 or section 491 shall apply-

(a) to a public servant acting in faith in the course of his duties connected with the security of State, the prevention, detention or, investigation of offences, the administration of justice, or the maintenance of public order; or

(b) to person acting under the directions of such public servant; or

(c) to the use by any person of any listening or recording apparatus for any purpose authorised or permitted under any law.

113. Substitution of new Section for Section 494 Bigamy.

(a) Do you agree that Explanation 1 be added to Section 494 in the Penal Code as a consequence of Supreme Court decision in Bhaurao v. State of Maharashtra (AIR 1965 SC 1964) in the following manner:-

Explanation 1 : For the purposes of this section, a person shall be deemed to marry again whatever legal defect there may be in contracting, celebrating or performing such later marriage.

(b) Do you agree that Explanation 2 to Section 494 be added as a result of Law Commission's recommendations by which it is made clear that where the relevant divorce law prohibits re-marriage of a party within a specified period after a decree of dissolution, such re-marriage amounts to bigamy in the following manner:-

Where a marriage has been dissolved by a decree of a competent court but the parties are, by virtue of a provision of the enactment under which their marriage is dissolved, prohibited from re-marrying within a specified period, then for the purposes of this section, marriage shall, notwithstanding its dissolution, be deemed to subsist during that period. Explanation 3 is proposed to be added to Section 494 incorporating the principle laid down by the Supreme Court in Sarla Mudgal's case reported in AIR 1995 SC 1531. Explanation 3 reads as follows :

Explanation 3.- The offence is committed when any

person converts himself or herself to another religion for the purpose of marrying again during the subsistence of the earlier marriage.

114. Substitution of new Section for Section 497 Adultery

Do you agree that the following be incorporated as provided in Clause 199 of the I.P.C. (Amendment) Bill, 1978 in order to bring in the concept of equality between sexes in marriage vis-a-vis the offence of adultery.

Section 497.- Whoever has sexual intercourse with a person who is, and whom he or she knows, or has reason to believe, to be the wife or husband, as the case may be, of another person without the consent or connivance of that other person, such sexual intercourse by the man not amounting to the offence of rape, commits adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.
Do you agree to the amendment ?

115. Amendment of Section 501 and 502:Of Defamation

Do you agree with the suggestion of Law Commission in its 42nd report on Indian Penal Code and Clause 202 of Indian Penal Code (Amendment) Bill 1978 that in Section 501 and 502 of the Penal Code, for the words " Simple imprisonment", the words "imprisonment of either description" be substituted.

116. Repeal and savings:Indian Penal Code (Amendment) Act, 1978 and the Criminal Law (Amendment) Act, 1978

Do you agree as provided in clause 207 of the Indian Penal Code, (Amendment) Bill, 1978, namely-

(1) As from the commencement of the Indian Penal Code (Amendment) Act, 1978, the Criminal Law Amendment Act, 1938, shall stand repealed.

(2) The provisions of section 6 of the General Clauses Act, 1897, shall, so far as may be, apply in respect of any investigation, legal proceeding or remedy that may be instituted, continued or enforced after the repeal of the enactment referred to in sub-section (1).

117. Insertion of new Section 507A :Causing damage to places open to public view.

Do you agree that a new section, namely, S. 507A which refers to causing damage, etc. to places open to public view be incorporated in the following words:-

507A. (1) Whoever -

(a) affixes to, or inscribes or exhibits on, any place open to public view any objectionable matter, or

(b) damages, destroys or defaces any place open to public view,

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

(2) In this section -

(a) "place open to public view" includes any private place or building, monument, statue, post, wall, fence, tree or other thing or contrivance visible to a person being in, or passing along, any public place;

(b) "objectionable matter" means any effigy or any bill, notice, document, paper, or other thing containing any words, signs or visible representations which is -

(i) likely to incite any person to commit, murder, sabotage or any offence involving violence; or

(ii) likely to seduce any member of any of the armed forces of the Union or of the police forces from his allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force; or

(iii) likely to incite any section of the public to sets of violence against any other section thereof; or

(iv) deliberately intended to outrage the religious feelings of any class of citizens of India by

insulting or blaspheming or profaning the religion or the religious beliefs of that class; or

(v) grossly indecent or scurrilous or obscene or intended for blackmail.

Do you agree to incorporation of the section ?

118. Amendment of Section 510: Misconduct in public by drunken person

Do you agree that in Section 510 for an offence (misconduct) generally not noticeable, for the words "with Simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees or with both", the words "with imprisonment till rising of the court or with fine which may extend to one hundred rupees" be substituted as provided in clause 205 of the Indian Penal Code (Amendment) Bill, 1978?

119. Omission of Chapter XXIII: of attempts to commit offences

Do you agree that Chapter XXIII (Section 511), "of attempts to commit offences" of the Penal Code be omitted, in view of the fact that a new Chapter VB "Attempts" has been recommended for inclusion as recommended in Clause 45 of the Indian Penal Code (Amendment) Bill, 1978?

ANNEXURE II

WORKING PAPER ON THE INDIAN PENAL CODE VIDE DO LETTER NO.
6(3)(36)/95-LC(LS) DATED 26.12.95.

D.O. No. 6(3)(36)/95-LC(LS)

Dr. S.C. Srivastava
Joint Secretary &
Law Officer

GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE
& COMPANY AFFAIRS
DEPARTMENT OF LEGAL AFFAIRS
LAW COMMISSION
SHASTRI BHAWAN,
NEW DELHI-110 001

Tel: 3385931

Dated 26-12-95

Dear Sir,

The Government of India has made a reference to the Law Commission of India to undertake a Comprehensive revision of the Indian Penal Code, 1860 and to come up with the appropriate recommendations.

The Indian Penal Code, which is the basic penal law of India, is more than 135 years old. However, the Code was amended time and again in order to meet with different forms of crime developed in the respective times.

The Law Commission of India in its 42nd Report of "Indian Penal Code" submitted in June 1971 made comprehensive recommendations to amend the Indian Penal Code. In Order to

implement these recommendations, the Government of India introduced a comprehensive Bill, namely, the Indian Penal Code (Amendment) Bill, 1978 which was passed in Rajya Sabha in November, 1978. However, it could not be passed by the Lok Sabha as it was dissolved in 1979.

The National Commission for Women has also made certain recommendations on the subject. In view of above, the Law Commission has undertaken the study of comprehensive revision of the Indian Penal Code so as to remove lacunae and to update the law to meet the current needs of the society.

Some of the main issues which have drawn the attention are as follows:-

1. Common intention and common object- Section 34 and 149.

In cases where accused are tried constructively by application of Section 34 or 149 and where some of them are acquitted on some ground or the other, the remaining whose participation conjointly though established, are also being acquitted on the simple ground that requisite number of such accused is less than two or five.

It needs therefore a further examination whether Sections 34 and 149 be amended to make a single accused also be constructively liable ultimately of an offence, when even

though such an accused was charged along with other accused, but who are acquitted, if the Court finds that such single accused along with one or more accused conjointly committed the offence.

2. New forms of punishment:

The Supreme Court has emphasised in a number of cases that while awarding punishment to a convict, the Court should adopt the reformatory approach instead of awarding deterrent punishment wherever possible. In tune with the aforesaid judicial decisions, it is felt that the following new forms of punishment be introduced in the Indian Penal Code in addition to or as alternative to imprisonment:-

- (a) Community service
- (b) Disqualification from holding office
- (c) order for payment of compensation: and
- (d) Public censure.

If the aforesaid approach is adopted, other relevant factors would also be required to be considered as to the kinds of offences for which these punishments should be made applicable. Quite apart from this while awarding the punishment of community service, other relevant factors such as age of the convict namely he should be above eighteen years, nature of work, duration of work, remuneration, if any, payable to the convict, be considered.

As regards compensation to the victim, it is prime facie felt that Court should take into consideration the relevant factors such as the nature of the offence, the motive therefor, the economic status of the offender and of the person in whose favour such order is made. The Court may also take into consideration other relevant factors in this regard. While making the monetary compensation to the victim of the crime or his dependents for any loss or damage arising from such offence, it needs a deeper examination as to whether the amount of compensation should have any limitation qua the amount of fine imposable under the nature of offence for which he is convicted. In order to avoid the multiplicity of proceedings, should the victim be compensated adequately by the same Court instead of compelling the victim to resort to civil proceedings for recovery of the compensation?

Under the punishment of disqualification from holding office, it is felt pertinent that where any person holding office as a Director or manager of a company or as a public servant is convicted of any offence committed in connection with the affairs of the company or with his office as public servant, the Court should be empowered to award in addition to imposing any other punishment authorised by law, declare the person so convicted to be disqualified from holding the same or similar office or exercising similar functions in the company or organisation where he was holding such office or

in any other company or organisation, for a period not exceeding five years. The Court may even direct for making publication of such an order in such newspaper in such other manner as it may deem fit.

3. Compulsion by threats:

Due to increase in crime by the underworld dons there has become a constant threat to the security of life and property of innocent citizens. With the result many accused go scot free because of non availability of evidence of witnesses of the crime because of threat met out to such persons not to open up their mouth. Such witnesses are even compelled to speak falsely under duress. The defence of duress is now limited to threat of instant death to the person compelled. But it is necessary to examine whether such defence or duress should be extended to threat to instant death or grievous bodily harm to the person compelled or to his near relatives. In view of this it needs consideration whether Section 94 should be redrafted to include harm to near relatives like parents, spouse, son or daughter and that a person threatened with such harm be permitted to plead duress as an excuse in the same way as a person threatened with death. Similarly the present restriction on the right of private defence in cases where there is time to have recourse to the protection of the public authorities, should be considered for omission.

4. Constructive Liability of Companies:

It is felt that the company and the Board of Directors or the persons responsible for the conduct of affairs of the company should be constructively made liable for offences committed in furtherance of the affairs of the company by an employee thereof. Do you think that the onus should be placed on a Director to establish that he was not associated with the nature of offence complained of and was therefore not liable for such offence? Such provision can be inserted in new sections 94A, 94B.

5. Statement intending to cause offences against public tranquility

There is a recent increase in the activity of promoting enmity, hatred or ill-will between different groups on grounds of religion, race, language, caste or community which requires to be dealt with in a stern manner. Such a tendency is also likely to cause terror in society or alarm to the public. To curb it, a new Section 153C requires examination for insertion in the Indian Penal Code. Whether such step will help in curbing violence on the aforesaid grounds.

6 Public servants maliciously authorising payment in respect of contracts where the goods supplied or work done is not in accordance with the contract.

In recent years, it has been found that public servants maliciously authorise payment in respect of contracts where the goods supplied or work done is not in accordance with the contract. This has caused a great loss to the public exchequer. Therefore, a change can be considered to insert new section 167A to punish a public servant who authorises payment on behalf of Government or other public authority for goods supplied or work done under any contract when he knows that the goods or works are not in accordance with the contract.

7. Issuing or signing false medical certificate:

In order to check the growing malpractice of issuing and using false medical certificate, (e.g, Doctors seen outside M.V. authorises to give certificates to new applicant). It is to be considered whether it should be provided in the Indian Penal Code that any medical practitioner who knowingly issues any false medical certificate or certificate of fitness and any person who corruptly uses it as a true certificate should be punishable. If so, whether there should be different punishments for a certificate used in judicial proceedings and for other purposes.

8. Driving unsafe or overloaded vehicle on public way

There has been an alarming rise in accidents due in unsafe or overloaded vehicles on a public way. In order to check such threat to society, it is therefore felt that such an act should be made punishable. Should such a provision be inserted in the Code or left within the purview of Traffic authorities.

9. Printing etc. of grossly indecent or scurrilous matter or matters intended for black mail

In order to check the menace of blackmail by publication of scurrilous or grossly indecent matter in the media whether it is necessary to insert a new Section 292A to cover printing, exhibition, distribution, circulation of any picture or any printed or written document which is grossly indecent or scurrilous or intended to blackmail in printing or conveyance or doing business in printing or circulation, etc. or advertisers or attempt to do any punishment should be prescribed for second or subsequent offences?

10. Culpable homicide and Murder:

Do you suggest any change in Sections 299 and 300 to have a clearer definition of culpable homicide and murder?

Whether Section 302B should be made more specific mentioning in what cases death sentences should be awarded or whether it is better to leave it to the discretion of the Court to determine on the concept of "rarest of rare cases".

11. Causing death or injury by rash and negligent driving in hit and run cases

It has been found that many a time the accused who causes death or injury by rash and negligent driving run away without informing any police station within a reasonable time. In order to curb this tendency, would you suggest a change in Section 304A for making the running away without informing the police station within a reasonable time, an offence punishable under the Code.

12. Punishment for wrongful restraint and wrongful confinement

Because of lust to gain quick money, property or for other motives, gangs of hoodlums have been resorting to restraining or wrongfully confining victims or his/her relative. There is an apparent need to make such offences under Sections 431 to 344 of more aggravated nature, if committed by more than one person. There is need for exchange of views on it.

13. Hijacking of aircrafts or other vehicles

The cases of hijacking of aircraft and vehicles in recent past have been galore in parts of our country ridden with terrorism. In view of this, it is felt that the hijacking of an aircraft or vehicle be made punishable under the Indian Penal Code. Do you think that there should be a uniform punishment for both the offences or it should vary according to the gravity of the offence and be deterrent punishment in case of hijacking of an aircraft on board or in flight.

14. Theft in building, vehicle or temple, theft of property affected by accident, fire, flood etc., theft by employees, theft by putting person under state of intoxication or unconsciousness

Whether any change is necessary in Section 380 to cover the theft of public property in a public place of worship, etc.

Whether a new Section 380A can be inserted to make the theft from the possession of a person who was a victim of calamity like fire, accident, earthquake, etc. and whether such a theft should be treated as an aggravated one?

Whether Section 381A should be amended to cover the thefts committed by all employees not necessarily by clerks and servants, as you find in the present Section?

Whether Section 381A can be inserted to cover cases where the culprit puts any person in a state of intoxication of unconscious by means of a drink or drug in order to commit theft of any property in possession of such a person?

15. Blackmail

Cases of black mail, in the sense of dishonestly threatening one with publishing an imputation, harmful to his reputation or the reputation of near relative of that person is taking a new dimension. In view of this, it is for consideration whether a new Section 385A can be inserted in the Indian Penal Code to cover cases where a culprit dishonestly threatens to commit extortion by blackmailing.

16. Cheating

The Law Commission in its 29th Report considered how to tackle the problem of cheating Government, Corporation, Local Authority on a large scale by dishonest contractors. To combat this malady, it is recommended to insert a new Section 420A. Whether any further changes are necessary in this context?

17. Employees taking bribe in respect of affairs or business of employer or of person who engaged him

In order to curb the aforesaid act whether there should be a separate provision in the Penal Code providing for punishment for such an act. On the model of an English Statute, the Law Commission recommended a new Section 420B to cover the cases of taking bribe by private persons also in respect of employer's affairs or business. Your suggestions in this respect would be of great assistance.

18. Offence against privacy

The right of personal privacy has been construed by the Supreme Court to be covered under Article 21 of the Constitution of India and in thus a fundamental right. The ambit of the said legal position or in widened scope. Thus whether a new Chapter should be incorporated in the Indian Penal Code dealing with violation of personal privacy, if so, nature of acts which should be punishable under the Code. Consequentially it is for consideration whether as a beginning, the use of artificial listening or recording apparatus to eavesdrop on private conversations, or unauthorised taking photographs of a person without his consent or against his wishes and the publication of any information gathered by such method should be prohibited and made penal.

19. Insertion of new Section 166-A

There appears to be a general tendency on the part of the Police Officers to direct the witnesses of the crime to attend at places in violation of Section 160 of the Code of Criminal Procedure, 1973. The Law Commission of India in its 135th Report on "Women in Custody" recommended for insertion of new Section 166A in the Indian Penal Code, 1860 for punishing the violation of Section 160 of the Cr. P.C., and making the proposed offence cognizable, bailable and triable by any Magistrate. Should such a provision be inserted in the Indian Penal Code for curbing the tendency to violate the provision of Section 160 of Cr. P.C.?

20. Insertion of new Section 167-A

Complaints against Police Officer not to record the First Information Report at the police station, even though there is prima facie evidence of the commission of the cognizable offence has oftenly been made. Under the existing law, there is no provision for taking penal action against the police officers for their refusal to record information as contemplated by Section 154(1) of the Cr.P.C. The Law Commission in its 84th Report on "Rape and Allied Offences", and in its 152nd Report on "Custodial Crimes" also observed that the remedy available under sub-section (3) of Section 154 of the Cr.P.C. is not effective and adequate. It, therefore, recommended for enactment of a new Section 167A in the Indian Penal Code, making the failure to record the FIR

by officer in-charge of a police station, punishable with imprisonment for a term which may extend to one year or with fine or with both. In order to discourage or prevent the malpractice of refusing to register information relating to commission of cognizable offences, it needs to be deliberated besides the aforesaid measures of insertion of a new Section 167A on the aforesaid lines, what other suitable measures can be taken up for curbing the aforesaid malpractice.

I would, therefore, request you to kindly spare some of your precious time in giving your valued opinion to the issues raised herein above at your earliest convenience.

Looking forward to your co-operation.

With regards,

Yours sincerely,

Sd/-

(S.C.SRIVASTAVA)

ANNEXURE III

RESPONSES RECEIVED ON THE QUESTIONNAIRE ON THE INDIAN PENAL CODE, 1860

The Law Commission of India circulated a Comprehensive questionnaire (Annexure-I) on the Indian Penal Code, 1860 for eliciting views from various quarters.

The questionnaire was sent to the Registrars of the High Courts, the Home Secretary of the State Government & Union Territories, the President of Supreme Court Bar Association and High Courts Bar Association, National Commission for Human Rights, National Commission for Minorities, National Commission for SC & ST, National Women's Commission, State Law Commission, Police Officers, Advocates, Academicians and some social organisations, Institutions etc.

Responses were received from three State Governments, seven Judges and one Additional Registrar of High Courts, one Advocate, one Police Officer, one State Law Commission, and one Organisation (Nirantar).

Question No.1

All the seven Judges who responded to the questionnaire, agreed with the suggestions of the Law

Commission of India. However, the Addl. Registrar of the M.P. High Court has responded in the negative. One Advocate also has agreed to the suggestion. The police officer has offered no comments for question No. 1 to 17. The Law Commission of the State of Himachal Pradesh agreed with the proposal. Nirantar, a Woman Organisation has not responded to this issue.

Question No.2

Seven Judges and One Addl Registrar of High Courts have responded in the affirmative. The Law Commission of the Himachal Pradesh has also supported the proposal.

Question No.3

Most of the Judges who responded to our questionnaire have agreed with the proposal. Law Commission of the State of Himachal Pradesh and one Advocate also agreed as proposed to omit the definition of 'Servant of government' under section 14, Indian Penal Code, 1860.

Question No.4

Except Addl. Registrar and 'Nirantar', all the Judges, State Law Commission of Himachal Pradesh and One Advocate favoured the Omission of definition of "Government" under section 17.

Question No.5

Majority of the persons who responded to our questionnaire agreed with the suggestion of amendment of the definition of the word 'India' under section 18 of the Indian Penal Code.

Question No.6

Except One none of the Judges have agreed about the amendment of the definition of the word 'Judge' under section 19. One Judge is of the view that the word 'Judge' may be defined only as a Judge or Judicial Officer presiding over a Civil Court or Criminal Court under the provisions of Code of Civil Procedure or Code of Criminal Procedure. State Law Commission of Himachal Pradesh suggested to include the member of the 'Gram Panchayat' including its president(s) exercising Judicial Powers in respect of Civil matters.

Question No.7

Most of the persons who responded to our Questionnaire, have agreed with the suggestion.

Question No.8

Majority of the persons replied in the affirmative, however, Five Judges have further suggested that the members of the Parliament and the legislatures should also be brought within the definition of the public servant.

Question No.9

The proposal of insertion of new definition of the word 'State' under Section 21A has been supported by most of the persons who responded to the Questionnaire.

Question No.10

The suggestion for the amendment of the definition of the word "fraudulently" under section 25 has been endorsed by majority of Judges and also by the Law Commission of Himachal Pradesh.

Question No.11

All the Judges & Addl. Registrar, an Advocate, Law Commission of Himachal Pradesh who responded to the Questionnaire, have agreed with the suggestion.

Question No.12

For the omission of definitions of the words "A Will", "illegal omission", "Act/omission" under sections 31, 32 and 33 all the Judges, an Advocate including Law Commission of Himachal Pradesh responded in the affirmative.

Question No.13

Two Judges and one Addl Registrar replied in the affirmative but five judges are of the view that there is no need of amendment. The law is well settled that even a single person can be convicted if court comes to the conclusion that apart from him others have also conjointly committed the offence. So far amendment of Sections 34,36 & 38 is concerned, the existing words should continue. Remaining persons are silent on the issue.

Question No.14

Majority of the judges who responded to this question, are of the view that the definition of the word "offence" should remain as it is and the definition of the "Capital Offence" should be inserted as Section 40A: Law Commission of Himachal Pradesh agreed to the proposal.

Question No.15

Six Judges out of eight are of the view that the definition is comprehensive and there is no need of amendment or substitution of Section 43. The Law Commission of Himachal Pradesh and an Advocate agreed to the proposal.

Question No.16

Most of the persons who responded to the Questionnaire do not support the omission of the definition of the words 'vessel', 'year'/month' and 'Section' under Sections 48, 49 and 50. Law Commission of Himachal Pradesh agreed as proposed under this question.

Question No.17

Majority of persons who responded to the questionnaire have disagreed with the proposal. The Law Commission of Himachal Pradesh suggested to include the words "means of Communication" after the words "means of conveyance" under proposed Section 52-A.

Question No.18

Most of the people who responded to our Questionnaire agreed with the recommendations with some exceptions and suggestions. Five judges are of the view that the new form of punishment proposed should not apply to the economic and

social offences. The punishment of community service should be made applicable only to serious cases and the victim should be compensated by the trial court itself and maximum amount of compensation should be fixed. Some of them feel that "Community Service" may not be relevant and applicable to Indian condition and secondly, the amount of compensation to victim of crimes should be left to the discretion of the court.

The Advocate has not favored the punishment of "Community Service".

The police officer suggested to prescribe the minimum and maximum punishment for each penal section.

State Law Commission of Himachal Pradesh also supported the view to introduce the new forms of punishment for all offences except the heinous ones like murder, rape and offences involving moral turpitude.

Question Nos.19 to 29

Majority of persons including State Law Commission who responded to our Questionnaire, agreed with the proposals under above mentioned questions.

Question Nos.30 & 31

Most of the judges responded in the negative. Other persons either offered no comment or are silent on the question. The Law Commission of Himachal Pradesh agreed as suggested in question No. 30 but it is not in favour of any change under Section 100 of the Code.

Question Nos.32 to 35

Majority of the persons responded in the affirmative.

Question No.36

Except one judge, all the Judges disagreed with the suggestion for the enhancement of the punishment under Sections 115 & 116. The Law Commission of Himachal Pradesh and one advocate responded in the affirmative.

Question No.37

Majority of judges favoured insertion of Section 117A but they further suggested to cover the abetment by a child under 15 years of age but not less than 7 years of age. The Law Commission of Himachal Pradesh differs the proposal under this Question.

Question Nos.38 to 49

Most of the judges including Addl Registrar, an Advocate, State Law Commission who responded to the Questionnaire have agreed with recommendations. But the State Law Commission is not in favour of insertion of new Chapter V B (Under Question 39) in view of the existing provisions as contained in Section 511 I.P.C.

Question No.50

Six judges are of the view that there is no need of inserting of new provisions vide Section 166A. Remaining persons including State Law Commission agreed with the proposal. The police officer feels that the offence under Section 166 I.P.C. may be made cognizable and no separate penal Section 166A is necessary.

Question Nos.51 to 53

The majority of the persons who responded to the questionnaire, replied in affirmative. State Law Commission also differs the suggestions except omission of Section 226 (Under Question 53).

Question No.54

Most of the judges including State Law Commission and an Advocate are not in favour of omission of Sections 246 & 254.

Question Nos.55 to 62

Responses to these questions are in the affirmative. State Law Commission has highlighted the amendment in the Motor vehicle Act in the year 1994 under Sections 113, 114 & 115, therefore, insertion of new Section 279 A may not be necessary.

Question No.63

Except one Judge who is silent on the issue, all of them do not want any change in the definitions of 'culpable homicide' and 'murder'. As per State Law Commission, the existing definitions do not require any change.

Question No.64

Majority of the persons including State Law Commission who responded to the questionnaire, are of the view that it should be left to the discretion of the court and there is no need of any addition in section 302B.

Question No.65

This question has been responded in the affirmative by the judges and the State Law Commission. But latter is of the opinion that the offence should be made non-bailable and cognizable.

Question No.66

The amendment of Sections 307 and 308 of the Indian Penal Code has not been favoured by majority of the Judges and by the State Law Commission. A police officer is of the view that both the Sections should be clubbed together and the maximum punishment may be made upto life imprisonment.

Question No.67

Five judges agreed for the omission of Section 309 but two judges and Addl Registrar did not favour the same.

An Advocate is also of the view that the Section 309 of I.P.C. deserves to be deleted.

The Law Commission of the State of Himachal Pradesh has quoted the case of 'Gian Kanwar v. State of Punjab, AIR, 1996 Sc, 947 and suggested no change under this Section.

Question No.68

Most of the persons who responded to our Questionnaire have agreed with the Suggestions.

In case of amendment of Section 362: Abduction, majority of the persons feel that the offences of hijacking of aircraft and vehicle are increasing. As such a separate provision should be made under the code providing deterrent punishment. In case of kidnapping or abduction for ransom, minimum punishment of not less than 7 years should be provided.

A Woman Organisation, (NIRANTAR) suggested under Section 354A as under:-

- (a) change of age of minor from 16 to 18 years;
- (b) term of imprisonment from 3 years to 5 years;
- (c) making 'fine' mandatory;
- (d) offence should be cognizable and non-compoundable.

Question No.79

Amendment of Section 375 (Rape) as suggested vide our Questionnaire has been accepted by the majority of the persons but the State Law Commission is not in favour of any change under this Section.

The woman organisation suggested to delete the exception and explanation to the Section and explanation needs to be redrafted as under-

Explanation: The following are sufficient to constitute the sexual intercourse necessary to offence of rape:

- (a) the introduction (to any extent) by a man of his penis into the vagina, anus or mouth of a woman; or
- (b) the introduction (of any extent) by a man of an object or a part of the body (other than the penis) into the vagina or the anus of a woman.

It has also suggested the insertion of a new Section 375 A for "forcible sexual intercourse with a person of the same sex".

Question No.80

Most of the responses are in the affirmative. However, the Woman Organisation proposed that the punishment of rigorous imprisonment for life may be provided under Section 376(3) and to substitute the word 'child' for the word 'woman'. The proviso also needs to be deleted.

Question Nos.81 and 82

Most of the judges, State Law Commission and other persons who responded to our Questionnaire have agreed with the suggestions. However, the woman organisation suggested

that the proposed Section 376 F is similar to the existing Section 509, therefore, it may be worded similarly and the term 'eve-teasing' should be deleted.

Question No.83

Out of eight six judges disagreed with the suggestions and are of the view that the proposed provision will be misused. Out of remaining two one judge is of the view that the provision should be more clearly worded. The State Law Commission has endorsed the view. However, the woman organisation agreed with the suggestion but further suggested a draft of Section 376H with four illustrations and four explanations.

Question No.84

Most of the persons including the State Law Commission supported the proposal under this issue and added that the offence under section 377(c) should continue. The police officer is of the view that the word "voluntarily" may be omitted and the insertion of hand or stick or other object-into the womb of a woman may also be brought under this Section. However, the woman organisation suggests that the term 'unnatural' should be deleted and the offence of bestiality be provided under Section 377.

Question Nos.85 to 89

These Questionnaires have been affirmatively responded by majority of the persons.

Question No.90

Six Judges and State Law Commission are of the view that Section 396 of the code is clear and it should be retained in the present form.

Question Nos.91 to 97

Majority of persons including State Law Commission who responded our Questionnaire have agreed with the suggestions.

Question No.98

Five judges & Addl Registrar do not favour the substitution of new Section for Section 441, criminal trespass. Two judges have not given their views, however, Law Commission of Himachal Pradesh fully endorses the view.

Question No.99 to 117

Most of the persons including the State Law Commission who responded to the Questionnaire have agreed

with the suggestions, however, one judge suggested to make the exception more purposeful under the proposed new Section 492.

Question No.118

Only five judges disagreed with the recommendations remaining persons have replied in the affirmative and State Law Commission too.

Question No.119

Six judges & Addl Registrar agreed with the recommendations one judge has not expressed his opinion. The State Law Commission is not in favour of omission of Chapter XXIII of the code.

Other Responses

Question Nos.1, 7, 12 to 14 and 17- The National Law School of India University, Bangalore ("the School") has not favoured the proposed omissions/amendments of the definitions.

Question Nos.2 to 6, 8 to 11 and 16- The School has agreed to the suggestions subject to certain amendments.

Question No.28 has been responded in the negative by the School. As regards question No.29, the School has opined that there should be a separate Chapter to deal with corporate liability.

Question Nos.30 to 34- The School has suggested

certain amendments in sections 84, 85, 94 and 103.

Question Nos.39 to 41- The School has endorsed the insertion of new Chapter VB on "Attempts".

Question Nos.42 to 45 have been responded in the affirmative by the School. While responding to question Nos.57 and 60, the school has suggested amendments to sections 272, 273, 274, 275, 276, 292 and 293 regarding vicarious liability.

Question Nos.63 to 65- The School has not favoured any amendments in sections 299 and 300, but has suggested insertion of a proviso in section 304B.

Question Nos.79 to 83- While responding to these questions, the School has suggested for insertion of new provisions regarding criminal sexual contact, sexual assault and aggravated sexual assault.

Question No.114- While responding to this question, the school has made a suggestion for amendment of the provisions dealing with "Adultery".

List of persons whose responses have been received.

A. Judges/Registrar of High Courts

1. Chief Justice of Himachal Pradesh High Court.
2. Justice R.G. Vaidanatha, High Court of Bombay.

3. Sri R.S.Tripathi, Additional Registrar, High Court of Madhya Pradesh, Jabalpur.
4. Justice Nagendra Rai
5. Justice S.N.Jha, Patna High Court.
6. Justice Naresh Kumar Sinha, Patna High Court.
7. Justice P.K. Sarin, Patna High Court.
8. Justice G.J.Chaube, Patna High Court.

B. Advocate

1. Sri A.A.N. Sastri, Advocate, Hyderabad.

C. Police Officer

1. Mr. P.S.V. Prasad, Joint Director, Indian Police Academy, Hyderabad.

D. State Law Commission

1. Himachal Pradesh State Law Commission.

E. Organisations/Institutions

1. Smt Anuja Gupta, 'Nirantar', Centre of Women Education, New Delhi.
2. Dr.N.S.Gopalakrishnan, Asst. Professor, National Law School of India University, Bangalore.
3. Smt.Jayanti Patnaik, Chairperson, National Commission for Women, New Delhi.
4. The Institute of Company Secretaries of India.
5. Centre for Feminist Legal Research, New Delhi.

ANNEXURE IV

RESPONSES TO THE WORKING PAPER ON THE
INDIAN PENAL CODE, 1860

The Law Commission of India circulated a letter dated 26.12.95 (Annexure-II) highlighting the main issues involved in the Penal Code for eliciting views from various quarters.

The letter was sent to Registrars of High Courts, the Home Secretary of the State Governments & Union Territories, the President of Supreme Court Bar Association and High Courts Bar Association, National Commission for Human Rights, National Commission for Minorities, National Commission for SC & ST, National Women's Commission, State Law Commissions, Police Officers, Advocates, Academicians and some social organisations, Institutions etc.

Responses were received from three State Governments, Seven Judges and one Additional Registrar of High Courts, Two Advocates, Six Police Officers, One State Law Commission, One Academician and Two organisations (Nirantar and Federation Indian Chambers of Commerce and Industry).

Issue No.1

Five Judges are of the view that there is no need of amendment in Sections 34 & 149 of I.P.C.; even a single

person can be convicted if court comes to the conclusion that apart from him others have also conjointly committed the offence. Two Judges responded in the affirmative. The Addl. Registrar of M.P. High Court, Jabalpur, has also replied in the affirmative.

The Government of Gujarat agreed about the amendment of sections 34 & 149. But the Government of Bihar does not agree with the proposal of the Law Commission of India. The Government of Assam has sent its opinion about the amendment of only section 294-A of the Code.

Both the Advocates are silent on the issue.

One Police Officer is of the view that both the provisions can be put together in one section and provision may be made for punishment of even a single person committing offence conjointly. Four Police officers do not support the issue.

Himachal Pradesh State Law Commission has not favoured any change under these sections.

Academician is silent on the issue.

Both the organisations are silent on this issue. Women organisation (NIRANTAR) has responded to the issues which are related to women except a few general Questions.

Issue No.2

Seven Judges agreed with the proposal with some suggestions. Further, five Judges are of the view that the

new forms of punishments proposed should not apply to the economic and social offences. The Punishment of community service should be made applicable only to the summons cases. The victim should be compensated by the trial court itself and maximum amount of compensation should be fixed. Another Judge feels that the 'community service' may not be relevant and applicable to Indian conditions and the amount of compensation to the victim of crimes should be left at the discretion of the court which shall take into consideration while fixing compensation or damages in any civil suit arising out of the same cause of action and give an opportunity to both the victim and the accused.

Government of Gujarat agreed regarding the form of punishment as suggested by the Supreme Court. One State Government is silent on the issue.

Four Police Officers are of the view that as far as "Community Service" and "Public Censure" are concerned, it will be extremely difficult to administer in practice, however, they have agreed with the remaining proposals of the Law Commission.

One Police officer is of the view that "Community Service" needs to be defined. Compensation is neither a reward nor a punishment. Instead of making it as a form of punishment the maximum (Rs.50,000/-) and minimum (Rs.1000/-) fine amount may be prescribed depending on the nature of the offence. The fine amount so realised and also realised from the sureties for forfeiture of bail bond may go to a fund wherefrom payment of compensation may be given.

One Advocate is of the view that punishment of "Community Service" may not be effective. Section 70(2) does not appear to be Justified. The other Advocate has not responded the issue.

H imachal Pradesh Sate Law Commission agreed with the proposal of Law Commission of India.

The Academician also supported the issue.

Both 'Nirantar' and 'Federation India Chambers of Commerce and Industry' have not touched upon the issue.

Issue No.3

Eight Judges including Additional Registrar supported the proposal to re-draft Secion 94 as suggested under this issue.

Two State Governments responded in the affirmative. One Advocate is silent on the issue.

Four Police Officers agreed with the proposed amendment of Section 94. One Police Officer has forwarded his Article.

"New Times, New Crimes and old Laws'.

Another Police Officer offered no comments on 'Compulsion by threats.'

State Law Commission fully supported the issue and

also suggested to include 'brother', 'sister', 'grand parents', 'Son-in-law' or 'daughter-in-laws'.

'Nirantar' and 'FICCI' are silent on the issue.

Issue No.4

Eight Judges including Addl. Registrar agreed with the recommendations on constructive liability of Companies by inserting new sections 94.A and 94.B.

One State Government agreed, however, another State Government does not agree with the proposal.

One Advocate responded in the affirmative. Another Advocate has quoted a case of Hindustan Steels Ltd. v. State of Orissa, 25.STC -211 and Section 100 of Factories Act alongwith other details and does not favour the proposal.

Five police officers do not support the proposed amendment and one of them has suggested that it can be done in a special statute like the Company Act, but not in IPC.

The State Law Commission agreed with the suggestion.

'Federation of Indian Chamers of Commerce and Industry' is of the view tht the said proposal is uncalled for because the economic legislation already provide for vicarious liability of Directors in respect of offences committed by the Company. Further, it has not talked about any other issue.

Issue No.5

All the Judges and Registrar who responded to our issue have agreed with the proposal.

Two State governments responded in the affirmative.

One Advocate agreed but other one has not touched upon the issue.

Four Police Officers are of the view that the present provisions are adequate but punishment prescribed in Sections 153, 153A and 153B is required to be enhanced. One Police Officer has suggested that preaching or abetting to do acts of violence should be made an offence with severe penalty in the form of both imprisonment and fine.

State Law Commission agreed with the proposal.

'Nirantar' has not responded.

Issue No.6

All the Judges and Registrar supported the proposal for insertion of new section 167A.

One State Government agreed but another State Government does not support the proposal.

One Advocate responded in the affirmative whereas another Advocate has not touched upon the issue.

Four Police Officers are of the view that the proposed subject is already covered under the provisions of Prevention of Corruption Act, 1988 and there is no need of section 167A. One police officer feels that the proposed amendment may be inserted in Prevention of Corruption Act,

1988 and not in the Indian Penal Code.

The State Law Commission dittoes the suggestion.

Academician has not touched upon the issue.

Nirantar has not responded to this issue.

Issue No.7

All the Judges and Registrar who responded to our letter have replied in the affirmative.

Two State Governments supported the proposal and one of them has further suggested to make also a provision for corruptly using such certificates.

One Advocate also agreed with the recommendations.

Five Police Officers have supported the proposal, however, they are of the view that the Indian Medical Council should be involved in this issue.

The State Law Commission also supported the issue.

Academician and other organisations are silent on this issue.

Issue No. 8

Except one Judge, all the Judges and Registrar who responded to the letter have replied in the affirmative.

One State Government supported the proposal of the Law Commission of India and another State Government replied

in negative.

Only one Advocate agreed to this proposal.

Four police officers are of the view that the proposed amendment has been covered under the Motor Vehicles Act and there is no need to amend Indian Penal Code for that purpose. One Police Officer feels that even if it is required to make new provision, the same should be made in the Motor Vehicles Act instead of making it in the Indian Penal Code.

According to the State Law Commission, Sections 113, 114, 115 of the Motor Vehicle Act were amended in 1994, therefore, this issue does not need further change. However, punishment provided under Sections 279, 304-A and 337 of Indian Penal Code may be enhanced.

Issue No.9

All the Judges and Addl. Registrar who responded to the issue have agreed to the proposal.

One State Government replied in negative and another in the affirmative.

Both the Advocates supported the issue.

Four police officers are of the view that the provisions of Section 383 Indian Penal Code read with Section 44 IPC cover this crime. The punishment provided under this section needs to be enhanced.

One police officer replied in the affirmative.

Others who responded to the letter are silent on the issue.

Issue No. 10

The Judges and Addl Registrar who responded to letter, most of them have replied in the negative to change the definitions of "culpable homicide" and "murder". About death sentence, they feel it should be left to the discretion of the court. Both the State Governments also do agree with the existing provisions.

One Advocate who responded to the issue, has not supported the proposal.

Four Police Officers responded in the negative and one officer offered no comments on the issue.

As per State Law Commission present issue does not require any change.

Issue No.11

Most of the Judges who responded to the letter have answered this question in the affirmative.

Both the State Governments agreed with this proposal.

One Advocate also supported this issue.

Most of the police officers welcomed the proposal and one of the them further suggested to delete the punishment of imprisonment but the punishment by way of fine may be introduced by prescribing the minimum and maximum limit varying between Rs.10,000/- and Rs.50,000/-.

State Law Commission agreed as proposed and further suggested to make the offence non-bailable and cognizable.

Issue No.12

Most of the persons who responded to our letter (Annexure-II) have agreed to enhance the punishment for aggravated nature of the offences.

Issue No.13

Most of the Judges who responded, have agreed with the proposal of the Law Commission of India.

Both the State Governments responded in the affirmative.

One Advocate also supports the proposal.

Except one all the police officers have replied in the affirmative and pleaded for higher scale of punishment.

State Law Commission supported the issue and has pleaded to make the offence non-bailable and cognizable and punishment should be made deterrent and in any case not less

than 10 years.

Academician and other organisations have not responded.

Issue No.14

All the Judges who responded to the working paper have agreed to the suggestion.

One State Government agreed in toto but the Government of Gujarat is of the view that no change is necessary under Section 380 of the Indian Penal Code and new Section 380A is not required to be inserted. Further, it is agreed for the suggestions of Sections 381 and 381A under this issue.

One Advocate also agreed with the proposal.

Four police officers replied in the affirmative but one police officer is of the view that Section 380 of the Indian Penal Code need not be amended for inclusion of theft of public property. Instead of enacting a new Section like 380A, Section 404 may be made cognizable and non-bailable offence. One explanation may be added to Section 381 in order to clarify that servant includes employees. The incorporation of Section 381A is not suggested because it is difficult to prove intoxication and unconsciousness.

State Law Commission agreed with the proposal.

Issue No.15

All the Judges and Add. Registrar who responded to the issue have replied in the affirmative.

One State Government agreed to the proposal but another State Government replied in the negative.

One Advocate agreed to the suggestion.

Most of the police officers who responded the main issues of the Penal Code have replied in the negative. They are of the view that Section 387 read with Section 44 of Indian Penal Code is sufficient for punishing a person for blackmailing..

The State Law Commission has endorsed the proposal. It has also suggested that ragging in educational institutions should be made non-bailable offence under Indian Penal Code.

Issue No.16

The present issue has been supported by all the Judges and Addl. Registrar who responded to the issues.

One State Government has responded in the affirmative and another State Government in the negative.

One Advocate responded in the affirmative.

Four police officers responded in the negative but two police officers are silent on the issue.

The State Law Commission agreed to the proposal.

Issue No.17

All the Judges and Addl Registrar who responded to the letter have replied in the affirmative.

Both the State Governments responded in the affirmative.

Most of the police officers who responded to the letter have agreed with the proposal.

One Advocate also supported the issue.

The State Law Commission replied in the affirmative and suggested to make the offence cognizable and non-bailable.

Remaining persons are silent.

Issue No.18

Most of the Judges and Addl. Registrar of the High Courts who responded to the issues have replied in the affirmative.

One State Government has agreed to the proposal but another State Government responded in the negative.

One Advocate also supported the proposal.

Majority of the police officers do not agree with the proposal. They feel that it would seriously handicap the investigating agencies from legitimate use of surveillance equipments.

The State Law Commission fully endorses the view under this issue.

Issue No.19

About insertion of new section 166A all the Judges who responded to the letter, have agreed with the proposal of Law Commission of India.

None of the State Governments who responded to our letter have replied in the affirmative.

One Advocate expressed his views in favour of the said new Section.

Majority of police officers are of the view that the police in India are operating with crippling handicaps of manpower and material resources, so a proposal like this does not appear reasonable. One police officer has suggested that the State Governments may amend provisions of State Police Regulations in order to take disciplinary action against the

police officers violating provisions of Section 160 of Cr.P.C.

Other persons who have responded to our working paper either not replied or are silent on the issue.

Issue No.20

Except two state governments, most of the persons who responded to the issue have replied in the affirmative about the insertion of the new section 167A.

List of State Governments, Judges/Registrars of High Courts/Judicial Officers, Bar Council/Bar Associations/ Advocates/Public Prosecutors, Police Officers, State Law Commissions, Academicians and Social organisations etc. whose responses have been received.

A. State Governments

1. Mr. P.J.Dholkia, Law Secretary, Govt of Gujarat.
2. Mr. Madan Prasad Srivastava, Joint Secretary,
Govt. of Bihar.
3. Mr. S.C.Das, IAS, Secretary, Govt. of Assam.

B. Judges/Registrars/Judicial Officers

1. Chief Justice, High Court, Himachal Pradesh.
2. Justice R.G. Vaidanatha, High Court, Bombay.
3. Shri. R.S. Tripathi, Additional Registrar, High
Court, Madhya Pradesh, Jabalpur.
4. Justice Nagendra Rai)
5. Justice S.N. Jha) High Court,
6. Justice Naresh Kumar Sinha) Patna.
7. Justice P.K. Sarin)
8. Justice G.S. Chaube)

C. Bar Councils/Bar Associations/Advocates

1. Sri. A.A.N. Sastry, Advocate, Hyderabad.
2. Sri. K. Srinivasamurthy, Advocate, Supreme Court, Hyderabad.

D. Police Officers

1. Mr. Anjaneya Reddy, I.P.S., Director General (Vig. & Eng.), Hyderabad.
2. Mr. P.S.V. Prasad, Joint Director, Indian Police Academy, Hyderabad.
3. Inspector General, C.I.D., Patna, Bihar.
4. Deputy Inspector General, Eco. Offences, Patna, Bihar
5. Deputy Inspector General, B.M.P., Patna.
6. Deputy Inspector General, Anti-Dacoity, Patna.

E. State Law Commission

1. Himachal Pradesh State Law Commission.

F. Academician

1. Dr. C.D'Souza, M. Salgauncar, College of Law, Panjim, Goa.

G. Social Organisations

1. Smt. Anuja Gupta, "Nirantar" Centre for Women and Education, New Delhi.
2. Dr. Amit Mitra, Federation Indian Chambers of Commerce and Industry, New Delhi.

ANNEXURE-V

PROCEEDINGS OF WORKSHOP ON INDIAN PENAL CODE (AMENDMENT) BILL, 1978 AND INDIAN EVIDENCE ACT, HELD AT SHIMLA ON 26TH APRIL, 1997 ORGANISED BY HIMACHAL PRADESH STATE LAW COMMISSION IN COLLOBRATION WITH THE LAW COMMISSION OF INDIA.

A workshop on Indian Penal Code (Amendment) Bill, 1978 was held at Shimla on 26th April, 1997 under the auspices of the Law Commission of India and the Himachal Pradesh State Law Commissison.

The Workshop was inaugurated by Hon'ble Chairman, Law Commission of India, Mr. Justice K. Jayachandra Reddy. It was presided over by Mr. Justice R.S. Thakur, vote of thanks was presented by Member Secretary, Shri Jiwanand Jiwan, IAS. The Workshop was attended by around 50 participants representing Judiciary, Executive, Police and Law Faculty of the Himachal Pradesh University.

In his inaugural address, Hon'ble Mr. Justice K. Jayachandra Reddy, Chairman Law Commission of India, said that there is need to amend various provisions of the Indian Penal Code, 1860. He suggested setting up of an independent investigating agency with an independent prosecution

department, for the fair trial of criminal cases and speedy dispensation of justice. It was also observed by him that people are losing confidence in the investigation agencies because of the delay. He said that during investigation the concerned officers are being asked to perform other routine duties as well, which causes the delay. He suggested that the role of investigation agencies should not be undermined as they form the link between the court and other wings. He advocated close co-ordination between the investigating and prosecution agencies for the speedy disposal of criminal cases. Justice Reddy further said that it is the duty of the defence not to mislead the court and be fair and ensure that the guilty persons do not escape and the innocent are not punished. In the last, he drew attention of the participants to certain important proposed provisions as contained in Indian Penal Code (Amendment) Bill, 1978, while throwing these open for interaction.

Mr. Justice R.S.Thakur, Member, Himachal Pradesh State Law Commission, in his presidential address, welcomed the Chairman, Law Commission of India and Justice R.L.Gupta, Member, National Law Commission. He emphasised the need to amend the Indian Penal Code in view of the present day requirement. He also dilated on the rising crime graph and criminal law after the independence.

After the inaugural session, the first session started at 11.30 AM on the Indian Penal Code (Amendment) Bill, 1978. Justice Reddy, Chairman, Law Commission of India, chaired the first session. He pointed out that there are four agencies involved in criminal justice delivery system. These are; investigating agency, prosecution, defence and Court. He laid emphasis on fair work assigned to each of them, for the speedy and fair trial. He stressed the need for taking police into confidence. According to him, coordination between investigating agency and prosecution is also need of the hour. He referred to various provisions of Indian Penal Code (Amendment) Bill, 1978, which require specific deliberation during the course of workshop in order to meet the present day requirement in criminal justice system. During the discussion, however, he highlighted the difference between 'knowledge' and 'intention' for the purpose of completing the offence of murder. In the end, Justice Reddy threw open for discussion the issue of victimology.

In his reaction, Dr. I.P. Messey, Member, Himachal Pradesh State Human Rights Commission, appreciated the work done by the Law Commission of India on Indian Penal Code (Amendment) Bill, 1978. His emphasis was mainly on Sections 309, 376, 377, Sections 124(A), 124(B), which according to him, require updating. Mr. M.S. Mandayal, Presiding Officer, Labour Court, wanted a change in the definition of word 'India' as defined under Section 18 of the Indian Penal

Code. He was of the view that the definition should be widened so as to cover the whole of India including Jammu & Kashmir. He proposed that provision under Section 345 of the Code of Criminal Procedure should be suitably made in view of the Section 228 of the Indian Penal Code. Further, he stressed the need to amend Section 21 of Indian Penal Code to cover specifically the elected representatives such as M.L.As, M.Ps and Pradhans of Gram Panchayat etc. in the definition of Public Servants.

Additional Secretary (Law) to the Government of Himachal Pradesh, Shri K.C. Negi, suggested that ours being a welfare state, there should be provision in the Indian Penal Code to compensate adequately the victim or his family on the analogy of motor vehicle cases. He further suggested that protection should be provided to the witnesses in criminal cases inside and outside the Court, which provision is missing for the present.

Top ranking police officers of the State including D.G.P.'s and I.G.P.'s took active part in the deliberations. Shri R.K. Srivastava, Director General (CID) suggested that Section 79 of the Indian Penal Code should be dropped because of the provision under Section 76 thereof. Mr. Srivastava suggested that word 'near relative' in the proposed Section 94 should take in its sweep a 'friend' also. He too spoke on quantum of punishment to be awarded under Sections 302 and 304-A of the Indian Penal Code. Mr. A.K. Puri, Inspector

General of Police (Law & Order), voiced his concern saying that military service has not been defined under the Code. He further felt that there is no need to re-draft Section 124(B). In his opinion, it can be misused. Shri S.R. Mardi, Superintendent of Police, Shimla, was of the view that Sections 427, 182, 186, 189, 199(A), and 174 to 187 of the Indian Penal Code should be made cognizable, and non-bailable.

Professor C.L. Anand, Chairman, Department of Law, Himachal Pradesh University, Shimla, suggested that Section 99 of the Indian Penal Code should be made subject to Section 46 Cr.P.C. He dwelt on Sections 84, 299 and 300 IPC.

Hon'ble Chairman, Law Commission of India, dealt with all the points raised by the distinguished participants and he presented the correct perspective of all legal provisions which came up for discussion.

The following were present:

1. Mr. Justice K.Jayachandra Reddy, Chairman, Law Commission of India.
2. Mr. Justice R.L. Gupta, Member, H.P. State Law Commission of India.
3. Mr. Justice R.S. Thakur, Member, H.P. State Law Commission.
4. Shri Jiwanand Jiwan, Member Secretary, Law Commission of H.P.
5. Shri M.D. Sharma, Joint Secretary (Drafting), H.P. State Law Commission.

6. Shri S.S. Thakur, Secretary (Law) to the Govt. of H.P.
7. Shri S.N. Verma, Secretary (Home) to the Govt. of H.P.
8. Shri K.C. Negi, Addl. Secretary (Law) to the Govt. of H.P.
9. Shri Subhash Ahluwalia, Director Public Relations H.P.
10. Shri C.S. Sharma, Joint Director (Prosecution), Himachal Pradesh.
11. Shri Rameshwar Sharma, President, Distt. Consumer Disputes Redressal Forum Shimla.
12. Shri B.S. Thakur, Director General of Police, H.P.
13. Shri A.K. Puri, Inspector General of Police (Law & Order), H.P.
14. Shri I.N.S. Sandhu, Addl. Director General (Prisons), H.P.
15. Shri R.K. Srivastava, Addl. Director General (CID), H.P.
16. Shri C.R.B. Lalit, Registrar, H.P. University.
17. Shri B.S. Chauhan, Distt. & Sessions Judge, Shimla
18. Shri M.S. Mandayal, Presiding Officer, Labour Court Shimla
19. Shri T.N. Vaidya, Secretary State Legal Board, Shimla
20. Shri K.C. Chauhan, Member, H.P. Environmental Commission, H.P.
21. Shri S.R. Sharma, Superintendent of Police Lokayukta H.P.
22. Shri S.R. Mardi, Superintendent of Police Shimla
23. Shri Trilok Chauhan, General Secretary, Bar Association High Court of Himachal Pradesh
24. Shri Vineet Gautam, President, Distt. Bar Association
25. Shri Surender Steta, General Secretary, Distt. Bar Association.

26. Shri Malkiat Singh Chandel, Advocate
27. Shri K.D. Sood, Advocate
28. Dr. I.P. Messy, Member, Human Rights Commission, H.P.
29. Prof. C.L. Anand, Dean of Law Faculty H.P. University
30. Dr. P.L. Mehta, Associate Professor of Law, H.P. University
31. Dr. Suresh Kapoor, Associate Professor of Law, H.P. University.
32. Dr. O.P. Chauhan, Associate Prof. Law, H.p. University
33. Dr. D.N. Gupta, Asstt. Professor Law, H.P. University
34. Dr. H.R. Jhingta, Asstt. Professor of Law, H.P. University
35. Dr. K.C. Thakur, Asstt. Professor of Law, H.P. University
36. Shri S.N. Sharma, Asstt. Professor of Law, H.P. University.
37. Shri Dinesh Sharma, Law Officer, H.P. State Law Commission.
38. Shri Dalip Singh Kanwar, Section Officer, H.P. State Law Commission
39. Dr. Surinder Singh Jaiswal, Law Officer, State Law Commission
40. Shri Ashok Kumar Mohindru, Reader, H.P. State Law Commission
41. Shri Paras Ram, Sub Inspector (Lokkayukta) H.P.
42. Shri B.M. Sharma, Advocate
43. Shri Avtar Singh, Advocate
44. Shri Shashi Kumar Shirshoo, Advocate
45. Shri Sanjay Sharma, Advocate
46. Shri Bhagwan Chand, Advocate

47. Shri Vinod Sood, Advocate
48. Shri Pramod Thakur, Advocate
49. Shri Guljar Singh Rathore, Advocate
50. Shri Chander Mohan Sharma.

ANNEXURE-VI

PROCEEDINGS OF THE WORKSHOP ON CRIMINAL LAW UNDER THE AUSPICES OF THE LAW COMMISSION OF INDIA AND THE GOVERNMENT OF GOA HELD ON 18TH JANUARY, 1997 AT GOA.

The work-shop on criminal law was held at Panjim, Goa under the auspices of the Law Commission of India and the State Government of Goa. The workshop was chaired by Justice K. Jayachandra Reddy, Chairman, Law Commission of India. The workshop was organised to make a thorough study and ascertain views of the cross-section of the society lawyers, police officials, law officers and public prosecutors - to make suggestions for amendment and improvement in the Indian Penal Code.

The Goa Minister said that as society progresses, changes in the law were required to meet changing needs. Law cannot be static, he said, and added that it needs to adapt to change.

Referring to the heavy backlog of pending cases before the courts, Mr. Fernandes said both the governments, at the State and Centre, were "endeavouring to bring about reforms in the judiciary."

Mr. Fernandes expressed the need to review the Portuguese laws in Goa, as also laws enacted after Liberation.

Justice Jayachandra Reddy emphasised the need to evolve a separate system for investigating of criminal cases and the work presently faced by the police. He said the police are loaded with many duties besides the maintaining of law and order.

Justice Reddy said the Law Commission has suggested many steps and measures for speedy justice. He mooted that witnesses should be properly taken care of as they often have to come in from distant places and risk the loss of their daily earnings. He called for the State to take due care of the victims of criminal cases.

Justice Reddy strongly felt that the NDPS Act should be reviewed by experts. Goa High Court Bench's Justice Chandrasekhar Das stressed the need to change the image of the police. He said that police should consider themselves as friends of the people and this called for the need of introspection on the part of police.

Later at the workshop most of the participants expressed displeasure over the public censure of the criminal and to some extent making him to pay the compensation. But

there was a general consensus over the punishments like community service and disqualification from holding any office.

The workshop strongly felt that organised crimes should be dealt with a firm hand while criticizing the tendency of issuing false medical certificates to the accused which results in adjournment of cases and delay in bringing the culprit to book.

Some participants at the workshop pointed out that sexual crimes pertaining to children do not figure in the IPC (Amendment) Bill, 1978.

Justice Reddy was of the opinion that a separate cadre for prosecution officers could be created as very often every government that comes in power appoints its own nominees as prosecution officers. This, he said, hampers the prosecution work.

He further said that the new agency could be termed as the Directorate of Prosecuting Agencies.

Referring to the police force, he said that they worked under tremendous pressure and due to which at times they cannot devote the necessary time to investigate crimes

successfully. He said that there was a need on the part of the people to change their attitude towards the police force in the country.

Highlighting the importance of witnesses in the courts, Justice Reddy said that they have to be protected. According to Justice Reddy frequent adjournments granted in any case caused inconvenience to witnesses who travel from far off places to attend the court case. He remarked that the state authorities should take into cognisance the work done by witnesses.

He said if no attention is paid to this, the witnesses who are so vital in the proceedings of a case will lose their faith in the government agencies.

Speaking to journalists Justice T.K. Chandrashekhar Das supported the thought of setting up independent investigating and prosecuting agencies. He said that while the amendments were important, more important was the sustaining of these amendments. He opined that a thorough debate was required before bringing about any amendments in the IPC as all lacunae which may be hidden in the proposed amendments had to be overcome. Justice Ranjithkuram Batta, R.M.S. Khandeparkar, the district and sessions judges, Law Minister Domnick Fernandes, Law Secretary Subanna, besides others, were also present for the workshop.

Main topics which were placed for discussion pertained to insertion of new forms of punishment in the IPC in addition or as alternatives to imprisonment in case of organised crimes, constructive liability of companies, issuing of and signing of false medical certificates, unsafe driving or over-loading vehicles on public way, blackmailing including or scurrilous matter intended for blackmailing, hijacking of any air-craft, bus, taxi, car or any other vehicle, causing death due to rash and negligent driving in hit and run cases, offences against privacy, penal action for refusal to record FIR, sexual offences including change in the definition of rape, scams including bank frauds and kidnapping for ransom.

Many of the speakers suggested that punishment should be made harsh and should necessarily include imprisonment in cases of deaths caused due to rash and negligent driving and overloading of vehicles, especially since deaths on roads due to accidents had increased in the country. The present provisions in the Motor Vehicles Act as well as for rape, they opined served no deterrent effect on the accused.

Penal provisions were also suggested for refusal of registering of FIR by police officials.

The following were present:

1. Justice K. Jayachandra Reddy, Chairman, Law Commission of India.

26. Smt. Edna Rodrigues, Public Prosecutor
27. Shri Pramod S. Hede, Public Prosecutor
28. Shri V.N.S. Malkarnekar, Public Prosecutor
29. Smt. Asha Arsekar, A.P.P. Margoa
30. Shri J.C. da Costa, Asstt. Public Prosecutor
31. Shri Shekhar S. Parab, A.P.P., Panjim
32. Smt. Teodolinda S> Sardinha, Asstt. Public Prosecutor
33. Shri Subhas P. Dessai, A.P.P., Quepem
34. Shri Devidas Kerkar, Asstt. Public Prosecutor
35. Shri Shailesh Kalangutkar, A.P.P., Panjim
36. Shri Ladislau M. Fernandes, A.P.P. Vasco
37. Shri A.K. Nair, Supdt. of Central Excise
38. Shri T.V. Shivdas, Supdt. of Central Excise
39. Smt. Elma Colaco, Suptd. of Central Excise (Legal)

ANNEXURE -VII

PROCEEDINGS OF THE WORKSHOP ON "CRIMINAL LAW" CONDUCTED BY BAR COUNCIL OF ANDHRA PRADESH IN COLLABORATION WITH LAW COMMISSION OF INDIA AND BAR COUNCIL OF INDIA TRUST HELD ON 25TH AND 26TH OCTOBER, 1996 AT VISAKHAPATNAM (ANDHRA PRADESH).

Apart from the normal inaugural and valedictory sessions, there were five working sessions, namely-

- (a) Working Session I- Proposed amendments to Indian Penal Code.
- (b) Working Session II- Sentences and sentencing policies and procedures.
- (c) Working Session III- Arrest, remand and custody.
- (d) Working Session IV- Shift in trends of question of burden of proof in criminal matters.
- (e) Working Session V- Mens rea and modern criminal legislation.

2. As is clear from the above, Working Sessions III and IV do not relate to Indian Penal Code.

Working Session I: Proposed amendments to Indian Penal Code.

Faculty that led the Session:

- (1) Shri Justice K.Jayachandra Reddy
- (2) Shri K.G.Kannabiran
- (3) Shri B.Jangam Reddy

Shri Justice Jayachandra Reddy while briefing the participants outlined the passing of IPC and the times it has seen and some amendments made here and there during the long period of 136 years. Shri Jangam Reddy in his address traced the historical events.

He dealt with in his address amendment to section 124A which deals with 'Sedition'. He said that all the great leaders of the country were put behind the bars under this section- during emergency also most of the leaders were arrested. In addition to what is there, it is now sought to be amended. Even words that excite disaffection for administration of justice is also included. He posed a question "suppose the administration is unethical - is it wrong in criticising?" He wanted it to be considered. Dealing with sections 299 and 300 IPC he said they are better not to be disturbed. 'Mens rea' changes the perspective of the crime. He said that every one is trying to avoid responsibility. He said it is profit careering, looting and making money in anonymous names and evade detection. He suggested that such property, ill-gotten, shall be forfeited. He says that there is no law forfeiting such ill-gotten

wealth and he said that there is little dividing linedishonesty. He lamented that our legislators are educated illiterates. He opined that suggested amendment to section 124A is death sentence to freedom of speech, press and liberty.

He specifically pointed out that there is no specific provision in IPC that deals with the killing of animals by rash and negligent act. Section 429 IPC contemplates cruelty and it is a warrant case. Therefore, the life of an animal is as important as a man.

He specifically suggested

- (1) Wider circulation of amendments.
- (2) No amendment is proposed to tackle "scams" and incidentally he says that section 438 Cr.P.C. should be made non-applicable to such offences.
- (3) He said that attempts of certain offences are sought to be made but section 511 IPC is more comprehensive and is alright.
- (4) The new section 120C does not appear to have been drafted properly. Minimum sentence prescribed puts unnecessary fetters on judge's discretion. There can be no hard and fast rule in avoiding sentence.
- (5) Dealing with the proposed amendments "sexual assaults" he said sections 375, 376 and 376A are more clear than the proposed amendments.
- (6) Section 376A punishing even preparation for

committing rapes punishable will be atrocious. This gives scope for false implication. So it should be deleted.

Shri Kannabiran said that offences against human rights are not considered so far. He lamented that a person who takes Rs.50/- or Rs.100/- is treated on par with the person who accepted even crores. He opined it is necessary to define offences committed by the political persons. He said that rarest of rare cases shall not be defined. He is not for the state taking up retributory theory.

Shri C.Padmanabha Reddy said that there is lot of confusion while dealing with sections 302, 304 Part I and 304 Part II- there are number of judgements which are not consistent. There is any amount of necessity about clarification. He said that if there is intention to cause death it comes under section 302 and if there is knowledge only it will come under 304 Part II. That much appears to be sufficient. He said that separate definition has to be added to section 304B defining 'dowry' clearly.

Smt. Laxmi Rambabu referred to offences against women.

Shri M.Satyanandam, Metropolitan Sessions Judge, Visakhapatnam referred to Scams, Economic Terrorism Consumer Terrorism, Offences against Human Rights, Offences committed by politicians. He specially pleaded for making any offences against quality control, culpable.

Prof.K.Gupteswar, Principal, P.Venkatasubbaiah Law College, Hyderabad opined that attempts should be directed towards reformation and descriminalisation. He said it is better to unburden the IPC rather than putting more into it. He said that illustrations alter the section are not necessary. He referred to making a provision for unnatural offences and false marriages.

Shri Kandala Srinivasarao, Advocate, Visakhapatnam said that the words 'misappropriation' is not defined. Better if it done. Secondly, he said that since the word 'relative' in section 498A IPC is not defined, persons, for the single reason of being related to the husband are harassed even though they are nowhere near the place of residence of the married woman at the relevant point of time. It is, therefore, necessary to define 'relative' in section 498A by adding explanation limiting to those who are living with the couple at the relevant point of time. He said that section 498A is more abused and misused than used. He also pleaded for addition of section 498B making a wife punishable if she is cruel to her husband.

Shri Kannati Rama Mohan, Member, Bar Council of Andhra Pradesh opined that for temporary purposes/situations statutes should not be made. He pleaded for deleting section 498A as it is used as a handle by the police and spoiling the fabric of the society. It should be scrapped.

Kumari Kuljit Kaur, Advocate, Visakhapatnam suggested that offence under section 302 IPC should be made compoundable. Section 354 IPC should be divided into parts to attract eve teasing also.

Shri T.Venkataratnam, Advocate, Visakhapatnam observed that section 498A IPC is more misused. He commented that offence under section 498 IPC charge sheet cannot be filed on their own.

Prof.R.Venkatarao, A.U.Law College, Visakhapatnam observed that there appears to be some compromise in regard to the capital punishment and rarest of rare cases referring to AIR 1984 SC 1029 decision. The decision is illustrative and not exhaustive. Minimum mandatory sentence provisions are going opposite to human life.

Shri P.A.Kishore, Advocate, Visakhapatnam referred to section 498A and demanded that there must be a section to deal with cruel wives.

Shri K.V.Ramamurthy, Advocate, Visakhapatnam observed that section 420 IPC is limited to property offences; "deception" is not defined, so also "bankruptcy" and "black mail" are not defined. He also referred about constructive liability.

Working Session II

Delivering the key note address Justice Bhaskararao said that his article "Sentence and Punishment in Administration of Criminal Justice" has already been circulated. In his article he has dealt with at length the concept, policy and growth of sentencing. He has traced by giving extensive quotations from Manu to Court judgments.

Shri C.Padmanabha Reddy, Senior Advocate, Andhra Pradesh High Court said that he has aimed his views in the article but said it was written seven years back and much water has flown since then. He lamented that trial court spends time but it hardly takes minutes in superior courts and better consideration in point of time and attention is necessary in disposing of matters. He has referred to his article "Sentences and Sentencing Policies and procedures". He commented that in all earlier enactments only maximum sentence was fixed but the recent trend is fixing minimum punishments thereby curtailing the discretion of the judge in a given set of circumstances of a case before him.

Shri Kannati Rammohan Rao said that justice should be tempered with mercy. Referring to various suggested forms of punishment like community service, he said that it was not practicable.

Shri K.L.N.Sama, Advocate doubted whether section 427 Cr.P.C. was really to be given effect to, particularly when the remaining term of sentence was served after earlier sentence. He referred to sections 138, 139 of Negotiable Instruments Act and demanded compulsory punishment of six months simple imprisonment.

Shri V.Someswararao, Sri.C.S.Rao also spoke.

Prof.K.Gupteswar intervening said that he wanted to share some information about U.S.A. On 12.10.1984 Federal sentencing has been made an Act. The Supreme Court accepted it, one Judge dissenting.

Shri Srivastava, Joint Secretary, Law Commission of India sharing some information said that provision in default of fine has been taken care. He referred to sections 65 and 75 enhancement of punishment.

With some short observations about sections 303 and 307 IPC by Shri Justice K.J.Reddy, the session concluded.

Working Session V

Shri C.P.Padmanabha Reddy chaired the session with (1) Shri N.V.Ranganadham, Advocate, Visakhapatnam, (2) Prof.R. Venkata Rao and (3) Prof.K.Gupteswar as Faculty Members.

Shri C.P.Padmanabha Reddy, Senior Advocate, High Court of Andhra Pradesh initiated the discussion with lucid comments on the subject. He was of the view that mens rea should be an essential ingredient of criminal offence. Secondly, minimum sentence should not be provided for these type of offences and discretion must be given to the courts to award appropriate sentence.

Shri N.V.Ranganadham, Advocate & President, Bar Association, Visakhapatnam in his address traced the concept and theory of 'mens rea'. He said that the legislations are made making the 'act' itself punishable and without any need/reference to mens rea. He made reference to Drugs Act and Factories Act, etc., where the 'act' itself is made punishable. Therefore, mens rea may not always be insisted when the very doing of an act itself speaks all about it.

Prof.K.Gupteswar striking a note of caution said that total exclusion of mens rea may touch fairness. Intention or knowledge of existence of a particular legislation.

Publications making public the law must be made available. "Due Process and Fairness" have been violated if rules are not made available.

Prof.R.Venkatarao lauded the concept of 'Victim compensation' informed by Shri Srivastava. He referred to an enactment in Tamil Nadu constituting "Victim Assistance Fund".

Justice Shri Y.Bhaskararao traced the 'mens rea' from the English case R rs Prince, R rs John, etc. Recalling the criminal law lectures in Law College. He particularly appealed to make suggestion to plug the loop holes.

The following persons attended the workshop:-

1. Smt.K.Jhansi Rani, Hyderabad.
2. Shri K.Krishnamurthy, Hyderabad.
3. Shri R.V.Krishna Rao, Hyderabad.
4. Shri E.Sambasiva Pratap, Hyderabad.
5. Shri S.Srinivas Reddy, Hyderabad.
6. Shri K.Satnarayana Reddy, Hyderabad.
7. Shri S.Muralikrishna, Visakhapatnam.
8. Shri S.Srinivasamurthy, Visakhapatnam.
9. Shri C.D.Sarveswara Rao, Visakhapatnam.
- 10.Smt.C.Mahalakshmi, Visakhapatnam.
- 11.Shri P.Raviprakash Sarma, Visakhapatnam.
- 12.Kum.L.Venkatalakshmi, Visakhapatnam.
- 13.Shri U.S.R.Raju, Visakhapatnam.
- 14.Shri G.V.P.B.S.Murthy, Visakhapatnam.
- 15.Shri P.A.K.Kishore, Visakhapatnam.
- 16.Kum.Kuljeet Kaur, Visakhapatnam.
- 17.Shri P.Rajendra Prasad, Tenali.
- 18.Shri G.madhava Rao, Nizamabad.
- 19.Shri K.Anjaneyulu, Karimnagar.
20. Kum.K.Jayasree, Proddatur.
21. Shri Suresh Kumar, Nandikotkur.
22. Shri J.Janki Ram Reddy, Kurnool.
23. Shri A.Ramasubba Reddy, Kurnool.
24. Shri P.Srinivasulu, Vijayawada.
25. Shri E.Vikram Reddy, Karimnagar.

26. Shri R.Vijayanandan Reddy, Hyderabad.
27. Shri P.Boothtucker, Visakhapatnam.
28. Shri K.Maheswr Reddy, Visakhapatnam.
29. Shri K.L.N.Sarma, Khammam.
30. Shri K.V.Ramamurthy, Visakhapatnam.
31. Shri K.Lakshmi Ram Babu, Visakhapatnam.
32. Ms.Valli Y., Visakhapatnam.
33. Shri T.Sivarama Reddy, Vijayawada.
34. Shri D.P.Ramakrishna, Vijayawada.
35. Shri Ch.V.Sharma, Visakhapatnam.
36. Shri S.Jagannadham, Visakhapatnam.
37. Shri M.Venkata Raju, Visakhapatnam.
38. Shri M.Venkataramana, Visakhapatnam.
39. Kum. B. Jhansi, Visakhapatnam.
40. Smt.G.Uma Devi, Visakhapatnam.
41. Kum.S.Rajani, Visakhapatnam.
42. Smt.V.N.R.S.Madhavi, Visakhapatnam.
43. Smt.V.B.Seshamma, Visakhapatnam.
44. Shri Ch.Venkateswara Rao, Visakhapatnam.
45. Shri V.Someshwara Rao, Visakhapatnam.
46. Shri Polisetty Srinivasa Rao, Visakhapatnam.
47. Shri A.Bharat Kumar, Visakhapatnam.
48. Shri Kandala Srinivasa Rao, Visakhapatnam.
49. Shri Ch.Ram Babu, Visakhapatnam.
50. Shri V.Sarvanna, Visakhapatnam.
51. Smt.B.Kusuma Sree, Visakhapatnam.
52. Shri S.Krishna Mohan, Visakhapatnam.
53. Shri V.Satanarayana Sastry, Visakhapatnam.
54. Shri K.Balakrishna, Visakhapatnam.
55. Shri S.S.N.Raju, Visakhapatnam.
56. Shri P.V.V.Satnarayanamurthy, Visakhapatnam.
57. Shri C.N.V.D.Sastry, Visakhapatnam.
58. Shri K.Mallikarjuna Rao, Visakhapatnam.
59. Ms.M.V.Laxmi, Visakhapatnam.
60. Shri N.V.Badrinath, Visakhapatnam.
61. Shri M.S.Hussain, Visakhapatnam.
62. Shri P.Udayabhaskar Rao, Visakhapatnam.
63. Shri O.Kailashnath Reddy, Hyderabad.
64. Shri N.V.Raghava Reddy, Hyderabad.
65. Shri K.Suresh Reddy, Hyderabad.
66. Shri T.Venkataratnam, Visakhapatnam.
67. Shri V.Ashok Kumar, Visakhapatnam.
68. Shri K.Appa Rao, Visakhapatnam.
69. Smt.T.Padmavathi, Visakhapatnam.
70. Shri N.V.Ranganatham, Visakhapatnam.
71. Smt.A.Bhavani, Visakhapatnam.
72. Shri M.S.Madhav, Visakhapatnam.
73. Shri K.V.S.G.Sharma, Visakhapatnam.
74. Smt.G.S.M.Lakshmi, Visakhapatnam.
75. Shri D.Ramulu, Visakhapatnam.
76. Shri N.V.Chakravarthy, Visakhapatnam.
77. Shri P.Suresh, Viskhapatnam.
78. Kum.A.Sailaja, Visakhapatnam.
79. Mrs.D.V.Laxmi, Visakhapatnam.
80. Smt.G.Anupama Chakravarthy, Hyderabad.
81. Shri G.Krishnamurthy, New Delhi.

ANNEXURE VIII

PROCEEDINGS OF THE NATIONAL SEMINAR ON "CRIMINAL JUSTICE IN INDIA" HELD AT VIGYAN BHAVAN, NEW DELHI, ON FEBRUARY 22-23, 1997.

On February 22 and 23, 1997, National Seminar on "Criminal Justice in India" (with special reference to the Indian Penal Code (Amendment) Bill, 1978) was held at Vigyan Bhavan, New Delhi. Four Sessions i.e. Working Session I, Working Session II, Working Session III and Working Session IV were devoted to Indian Penal Code with special reference to IPC (Amendment) Bill, 1978. Vth and VIth Sessions were devoted to (i) Evidence Act and Burden of Proof and (ii) Mode of search and seizure of Narcotics under NDPS Act (Section 42-53 in NDPS Act), respectively.

The seminar was inaugurated by Hon'ble Mr. Justice J.S. Verma, Judge, Supreme Court of India. It was presided over by Shri Ramakant D. Khalap, Hon'ble Minister of State for Law & Justice.

In his presidential address, the Law Minister regretted that though judicial reforms were very much on the agenda of the government and it had made tall promises in this regard, it had become difficult to redeem that

assurance. He sought the evolution of new ways to book a new class of offenders who had emerged with the change in the country's scenario, following the implementation of the liberation policy. He called such offender "intellectual wizards" who might affect the country more than the common criminals.

In his inaugural address, Mr. Justice Verma said, if an agency or organ of the State had responsibility towards the citizens, judges too had equal responsibility and it was imperative for the Apex Court to act under Article 32 of the Constitution in aid of citizens rights.

Mr. K. T. S. Tulsi, Sr. Advocate emphasised that limitations should be removed in seeking truth in the dispensing of administration of justice.

Working Session I: Sentencing Policy and Combating organised crime-Kidnapping for ransom.

This session was devoted to sentencing policy and Combating organised crime-Kidnapping for ransom. The Session was presided over by Mr. Justice M. M. Punchhi, Judge, Supreme Court of India. Mr. Justice Punchhi made general observation regarding the principles to be followed by courts while

determining and awarding sentences. "For a judge, sentencing is a very difficult task" said Justice Punchhi. He also said "my experience shows any guidelines leads to injustice".

Shri P.P.Rao, Sr.Advocate, who was a Key Speaker on the subject generally endorsed the concept of plea bargaining which according to him, plays a vital role in the administration of criminal justice. He stated that retribution has now become a thing of past and that the implementation of preventive theory of punishment is a difficult task. He laid emphasis on the speedy trial of cases so as to ensure full compliance with Article 21 of the Constitution. However, the ground realities have to be kept in view while having a thorough look at the sentencing policy. He supported the new kinds of punishment proposed to be incorporated in the IPC (Amendment) Bill, 1978. He stated that trial by the media also hampers the justice.

Dr.R.K.Yadav observed that a Judge has to follow certain principles before passing sentences like the facts perceived by the witnesses before him and then he has to form an opinion whether witnesses were trustworthy and that Present sentencing policy tells us only to give either maximum or in some cases minimum sentence and as these guidelines are not enough, Judge has to evolve his own theory of punishment and then use his discretion in the circumstances of each case depending upon his perception of fact, his skill, his social ideology, his own norms, etc. He

also stated that apart from the above, there may be several mitigating factors to be taken into account while awarding the sentence. He endorsed the concept of "Public Censure" as a new form of punishment.

Shri Anup George Chaudhary, Sr. Advocate has stated that the proposed new forms of punishment are not properly stated in the proposed Bill and he also talked about the practical difficulties while implementing them. He suggested that as in the matter of punishment of imprisonment for life, the convict is normally released after fourteen years which may not give the desired effect of the punishment, this aspect needs to be considered.

Prof. B. B. Pandey has laid emphasis on reintegration and resocialisation of the criminals into the society so that he does not feel stigmatised in the society for all the time to come.

Shri Shekhar Gupta, Editor, Indian Express, observed that securing conviction through media should be discarded and avoided and that the man should not feel to have been affected by the media before even the actual trial commences. He also observed that minimum sentence as a matter of policy should not be prescribed as it does not serve any purpose and that the court should avoid imposing such fines as may ultimately prove to be counter-productive in the administration of criminal justice. He emphasised the

importance of awarding compensation to the victims and that the same should be normally awarded out of the fine imposed on the accused and section 357 should be suitably amended so as to provide for giving reasons in case where compensation is not given.

Working Sessions II: Changing facets of sexual offences and Offences against Privacy.

The Session commenced with introduction by Shri K.T.S.Tulsi, Senior Advocate. The session was presided over by Justice Dr.A.S.Anand, Judge, Supreme Court of India.

Justice Anand observed that section 155(4) of the Evidence Act needs to be suitably amended because even a woman of past immoral character has a right not to be sexually abused/assaulted. He also laid emphasis on camera trial and suggested that camera trial should be mandatory, particularly in cases involving sexual abuses and that every police station should have a lady officer for investigating a case against a female accused. He further stated that it should be ensured that tapping of telephone, bed room searches, unauthorised photography, etc, do not in any way invade privacy.

Shri Harish Salve, Senior Advocate observed that common law does not adequately protect the privacy and that the scope of proposed new section 490 needs to be broadened

as it at present does not extensively cover all situations and that provision contained in section 492 virtually renders the right to privacy under sections 490 and 491 nugatory. He also emphasised on the need to have a thorough examination of the matter.

Mrs. Padma Seth, Member, National Commission for Women, stated that dignity of women between four walls needs to be protected and that there should be adequate provisions to prevent domestic violence against women. She also suggested that in the new section 74C (Clause 27) proposed to be inserted in the IPC (Amendment) Bill, 1978 should also cover the offences of rape.

Mr. Justice C. Thakkar, Judge, Gujarat High Court while intervening stated that the provisions of the proposed new section 492 does not in any way render the provisions of section 490 and 491 meaningless as the proposed section 492 covers only acts done in good faith. However, there was another view that proposed section 492 virtually and completely nullifies proposed new sections 490 and 491.

Working Session III: Corporate Liability in Criminal Law and Liability of Doctors for issuing false certificates.

This session commenced with the introduction by Shri S.K.Gambhir, Advocate. The session was presided over by Justice Ms.Sujatha V.Manohar, Judge, Supreme Court of India.

Justice Ms.Sujatha V.Manohar made general observation regarding the new sections 94A, 94B proposed to be incorporated in the IPC (Amendment) Bill, 1978 as also about clause 91 of the Bill which seeks to insert new section 190A regarding issue or signing of false medical certificate and emphasised the need for suitable consideration and examination of these provisions.

Shri Dipankar P.Gupta, Sr.Advocate raised the basic issue as to whether company itself can at all be held guilty of committing an offence and if so, how it can be possible to award punishment of imprisonment for the company. He suggested that reappraisal of the proposed new section 94A and 94B is needed to ascertain whether these new provisions would serve any purpose at all. He further stated that employees of the company whether in managerial cadre or lower level should be held liable if they commit any offence while discharging their duties as it may not be physically possible to send the company itself to jail to suffer punishment of imprisonment.

Dr.D.K.Prahlada Rao, President, Institute of Company Secretaries of India vehemently opposed the insertion of new section 94A and 94B in the IPC as the insertion of these provisions would be counter-productive and would come in the smooth functioning of companies as according to him, it would be very difficult to decide as to who is really responsible for committing an offence and as sometimes there are several persons ranging from Director, Manager and other officers who are collectively and jointly incharge of running the business and in such a situation it would be rather impracticable to identify the real culprit who has actually been instrumental in committing the offence.

Dr.Achal Bhagat, Sr.Consultant, Apollo Hospital, explained the difficulties which the Doctors face while issuing certificates. He pointed out that sometimes to different views can be taken on the basis of a same clinical test results and that it may not be advisable to create criminal liability for a Doctor if he has issued any certificate in good faith. He further pointed out that there is no need to insert a new section 198A in the IPC as the existing provisions, particularly sections 193 and 194 are adequate to deal with the situation. He further stated that why only doctors should be discriminated when there are so many other authorities who issue certificates for various purposes.

**Working Session IV: Indian Penal Code (Amendment) Bill,
1978 and any other suggestion.**

The session commenced with the introduction by Shri R.L.Meena, Member-Secretary, Law Commission of India. The session was presided over by Mr.Justice S.R.Pandian, former Judge, Supreme Court of India.

Mr.Justice Pandian made general observation of the various provisions contained in the Bill. He pointed out that it may not be necessary to define "India" under section 18 of the IPC as proposed under clause 18 of the Bill and that proposed new sections 74A, 74B, 74C and 74D needs to be further examined. He also emphasized upon the need for making suitable amendments in clauses 75 and 76 of the Bill.

Shri R.K.Jain, Sr.Advocate and President, Supreme Court Bar Association pointed out that only those judges who know criminal law should sit in the bench, if the bench is deciding a criminal matter and that judge should have compassion while dealing with criminal matters. He also pointed out that more offences should be made compoundable with the leave of the court and that there should not be any

death penalty at all as it does not serve any purpose. He also emphasised upon the need to apply borstal laws. He further pointed out that section 309 should be deleted.

Mr. Justice V.S. Dave, former Judge, Rajasthan High Court made general observation regarding criminal justice system.

The following persons attended the Seminar:-

Agarwal Anita - High Court, Bombay
Agarwal E.C. - Advocate, Supreme Court.
Agarwal Mahesh-Advocate, Supreme Court.
Agarwal S.K. - Advocate
Agarwal Sharda Ms. Addl. Dt.S.J, Delhi.
Anand A.S.Dr. Justice, Judge, Supreme Court.
Anand Pinki Ms. Advocate Delhi High Court.
Anand S.D. Joint Secretary, (Law) Haryana.
Arunachalam T.S. Sr. Advocate, Supreme Court.
Arya Aditya Dr. Dy. Commissioner of Police, Delhi.
Bagga Reena, Advocate.
Balaji V., Advocate.
Bakshi P.M. Former Member, Law Commission.
Balchandran M., DIG, CBI.
Banarjee D., Addl. DC, Intelligence, Calcutta.
Bhagat Achal, Sr. Consultant, Appollo Hospital.
Bhatnagar A.P. Addl. D.G.P. Punjab.
Bharadwaj Omendra, DIG, Rajasthan.
Biswas A.M. Member, National Commission for SC & ST.
Chandra Bharat, Addl. DGP, Andhra Pradesh.
Chandra Satish Dr. Addl. LO. Law Commission.
Chaudhary musharraf Ms. Advocate.
Chawla S.C. Advocate.
Chopra R.C. Addl. Dist. & Session Judge, Delhi.
Das B.S. Advocate, Cuttack.
Das Manoj K. Advocate.
Dave V.S. Justice, Retd. Chairman, State Law Commission, Rajasthan.
Dhania R.P., Chief Prosecutor, Directorate of Prosecution, Delhi.
Dhawale Sujatha, Confederation of Doctors Assn.
Dikshit R.C., Addl. D.G.P., Uttar Pradesh.
Dulre N., D.I.G., Gwalior.

Gambhir S.K., Advocate, Delhi.
Gambhir Vivek, Advocate, Delhi.
Ganguly A.K. Justice.
Garg Manish, Advocate, Delhi.
Gautam D.N., D.I.G., I.T.B.P.
George Anup., Sr.Advocate.
Ghildiyal Subodh, Journalist.
Gulati B.L., Secretary (Law), Haryana.
Gupta Aruneshwar, Advocate.
Gupta Arvind, Advocate.
Gupta A.K., Advocate.
Gupta Dipankar, Sr.Advocate.
Gupta K.L., A.D.G. Police (Crime), Uttar Pradesh.
Gupta R.L. Justice, Member, Law Commission.
Gupta Naresh Kumar, Advocate.
Gupta Shekhar, Editor, Indian Express.
Jacob Alice Mrs., Member, Law Commission.
Jain R.C., New Delhi.
Jain R.K., Sr.Advocate, New Delhi.
Jha S.N. Justice., Judge, Patna High Court.
Kak Purnima Bhat Ms., Advocate, Supreme Court.
Kapoor Suman, Advocate.
Katara Parmanand Pt., Advocate.
Kaw Sanjay, Journalist.
Khalap Ramakant, Union Minister of State for Law & Justice.
Khurana Ruchi Ms., Trainee Advocate.
Krishnamurthy Ch.G., Member, Law Commission.
Kumar Mukesh, Trainee Advocate.
Kumar Sushil, Sr.Advocate.
Kumar Swatanter Justice, Judge, P&H High Court.
Kumaraswamy K., Addl.D.G.P.(Crimes), Tamil Nadu.
Lalit Uday, Advocate.
Manchardi Ramesh, Chief Prosecutor, Directorate of Prosecution, Delhi.
Manohar Sujatha V.Justice, Judge, Supreme Court.
Mansharamani G.G. Dr., Delhi.
Mathur S.P., B.P.R & D.
Mathew Anne, Advocate.
Meena M.D., I.G., Police, Surat.
Meena R.L., Member-Secretary, Law Commission of India.
Nair Vipin, Advocate.
Narayan Nand Indra, Advocate.
Narayan Ranjana Mrs, Advocate.
Nariman F.S., Sr.Advocate.
Niklesh R., Advocate.
Pahwa Vikas, Advocate.
Pali Anand, Advocate.
Palli Rekha Ms, Advocate.
Pandey B.B., Faculty of Law, University of Delhi.
Pandher G.S., D.G., B.P.R.& D.
Pandian S.R. Justice.
Parthasarathy K., Law Secretary, Pondicherry.
Parekh P.H., Advocate.
Perreria Maxwell, Addl.Commissioner of Police.

Pradhan B.R., Law Department, Govt. of Sikkim.
Prasad P.S.V., Jt. Director, S.N.P.A.
Punchhi M.M. Justice, Judge, Supreme Court.
Puri S.S., Director of Public Prosecutions, Mumbai.
Rachhdya P.N., I.P.S.
Raina S.C. Dr, Project Director, B.P.R. & D.
Raheja Devinder, Chairperson, Law Dept, Kurukshetra
University.
Ram Mani, I.P.S.
Ramalingam P.N., Advocate.
Rao A.T., Advocate.
Rao D.K. Prahlada, President, Institute of Company
Secretaries of India.
Rao M. Jagannadha Justice, Chief Justice, Delhi High
Court.
Rao M.V. Krishna, Director, A.P. Police Academy.
Rao P.P., Sr. Advocate.
Rao Sulaxan J.T., A.L.O., Law Commission.
Rangam A.V., Advocate.
Ranganathan Buddy, Trainee Advocate.
Rath Srilok N., Trainee Advocate.
Rathore S.P.S., D.G.P. (Crimes), Rajasthan.
Reddy C.S.R., SSP., Chandigarh.
Reddy K. Jayachandra Justice, Chairman, Law Commission
of India.
Reddy Sadashiva, Advocate.
Reddy Usha Ms., Advocate.
Sachar Rajender, Senior Advocate.
Sainghar N.K., I.P.S. (Retd)
Salvé Harish, Sr. Advocate.
Sampath A.T.M., Advocate.
Sandhu H.S., S.P., C.B.I.
Sankrityayana K Dr., Member, National Commission for
Minorities.
Satish R., Advocate.
Seth Padma Ms., Member, National Commission for
Women.
Sharma Atul, Advocate.
Sharma M.K. Justice, Judge, Delhi High Court.
Sharma Pawan Mrs, A.L.O., Law Commission.
Sharma T.C., Advocate.
Sharma Vibhakar, D.I.G., Tirunelveli, Tamil Nadu.
Sharma Vishnu, Advocate.
Shroff M.N., Advocate.
Shinghal N.K. Retd. I.P.S.
Sibal Kapil, Sr. Advocate.
Singh J.P. Addl. Dist. Judge, Delhi.
Singh Bhawani Justice.
Singh Sultan, Advocate.
Srivastava G.P., Advocate.
Srivastava S.C., Jt. Secretary, Law Commission.
Subashini A., Advocate.
Suri A.K., Addl. D.G., J&K, Jammu.
Suri R.S., Advocate.
Syed S.J., Legal Consultant, National Commission for
Women.

Thakker Chnilal Justice, Judge, Gujarat High Court.
Thomas K.T. Justice, Judge, Supreme Court.
Sanjay Tripathi, D.L.O., Law Commission.
Trivedi B.V Dr., Asst. Director, B.P.R.&D.
Tulsi K.T.S., Sr.Advocate.
Upadhaya A.K., A.L.O., Law Commission.
Varshy Anup Kumar Dr.
Verma J.S.Justice, Judge, Supreme Court of India.
Venkatachalliah M.N. Justice, Chairman, National
Human Rights Commission.
Wadhwa D.P. Justice, Chief Justice, Patna High
Court.
Yadav R.K., Addl.Dt.Judge.
Yadhav Ranbir, Advocate.

ANNEXURE-IX

PROCEEDINGS OF THE WORKSHOP ON PROPOSED AMENDMENTS TO INDIAN PENAL CODE (AMENDMENT) BILL 1978 HELD JOINTLY BY THE LAW COMMISSION OF INDIA AND THE ANDHRA PRADESH JUDICIAL ACADEMY ON 14TH DECEMBER, 1996 AT A.P. JUDICIAL ACADEMY, SECUNDERABAD.

The first session was the Inaugural Session where Hon'ble Sri Justice K. Jayachandra Reddy, Chairman, Law Commission of India presided over the function. Hon'ble Sri Justice Prabha Shanker Mishra, Chief Justice of Andhra Pradesh was the Chief Guest. Sri H.J. Dora, IPS, Director General of Police of the State of Andhra Pradesh, addressed the gathering.

Actual business commenced from the 2nd session onwards. The second session concerns Amendments in respect of offences relating to Human Body.

Hon'ble Sri Justice Y.Bhaskar Rao, Judge, High Court of Andhra Pradesh opened the Session. He referred to 42nd Report of Law Commission as well as 1978 Bill. He first explained the offences relating to Human Body. He read quotation from Manu with reference to the aspects to be borne in mind in the imposition of sentence.

Hon'ble Shri Justice Y. Bhaskar Rao, pointed out that the guilty must be punished. He declared that the crime is in the increase in geometric (progression) since Independence in 1947, whereas punishment has been on the decline and that only 2% of the cases tried by the courts are ending in conviction.

Shri C.Padmanabha Reddy, Senior Advocate of the High Court of Andhra Pradesh, spoke next. He pointed out the opinion of Sir James Fitzgerald Stephen's remark that Sec.299 and Sec.300 IPC are the weakest part of the gamut of the Indian Penal Code. He made reference to the famous Govinda's case decided by the Bombay High Court as well as the 42nd Law Commission Report. He pointed out that there is confusion between Sec.304 first limb and Sec.304 second part I.P.C.

Shri C. Padmanabha Reddy suggested that Indian Penal Code may be suitably amended to punish the guilty under Section 302 IPC only when the offence is premeditated. He further suggested that if the case falls in one or the other exception of Sec.300, the punishment should be under Sec.304 first limb and other offences of murder shall be punished under the second part of Sec.304 IPC.

He criticised Sec.304-B and pointed out that dowry within the meaning of Sec.304-B IPC shall be given the same meaning as Sec.2 of the Dowry Prohibition Act defines dowry.

He further stated that fine should be imposed compulsorily for the offence under Sec.304-B IPC and that such fine shall be made payable to the victim.

He suggested that Sec.309 IPC shall be removed from the statute book making reference to Sec.303 IPC as one which is (practically) removed from the statute book. With regard to Sec.354 IPC Shri C. Padmanabha Reddy suggested that the State Amendment of the Andhra Pradesh shall be carried out in the central enactment also.

Shri M.E.N. Patrudu, Registrar (Vigilance), High Court of A.P. spoke next pointing out that if a person kills one person by mistake instead of killing another person, such an offence shall be made punishable under Sec.302 IPC if there is premeditation. He further suggested that gruesome murder, or murder by hired assassin shall be compulsory punishable with death.

He suggested that there shall be a minimum sentence of 5 years for offences punishable under Sec.304-A first limb or the second limb. he also suggested minimum punishment of 5 years for the offence under Sec.304-A IPC and that if both rashness as well as negligence are established, the punishment for 304-A IPC shall be a minimum of 10 years. He further recommended minimum punishment for Sec.306 IPC.

Shri M.E.N. Patrudu pointed out that Section 307 IPC is grossly misused by the prosecution agency. Regarding the offences of rape and outrage of the modesty of woman covered by the Sec.376 and 354 IPC, Shri M.E.N. Patrudu considered that the attempt of the said offences do not carry clear definition and suggested proper definition of the attempt of rape and for the attempt to outrage the modesty of a woman.

Shri M.E.N. Patrudu also suggested for a provision in the Indian Penal Code for the punishment of sexual harassment of lady employees by the concerned employer pointing out that such harassments have been on the increase.

Hon'ble Shri Justice K.S. Srivasthava, who spoke thereafter pointed out that Sec.303 IPC shall be deleted from the statute book. He pointed out that the definition of wife shall include even a second wife even while the first marriage is subsisting within the meaning of Sec.304-B IPC by providing explanation to Sec.304-B IPC so that a husband who contracted a second marriage can not have licence to treat the second wife cruelly. Shri Justice K.S. Srivasthava further pointed out that a even a concubine known to public as the wife shall also be treated as a wife for the purpose of Sec.304-B IPC.

He pointed out that abduction simpliciter is not punishable at present and that such abduction should also be made punishable.

He further suggested that even if a wife is living separately from the husband without a formal decree of judicial separation, a husband who forces such separated wife for carnal knowledge shall be considered to be a rapist and punished suitably, by suitably amending Sec.376-A IPC.

With reference to Sec.320 IPC Shri Justice K.S. Srivasthava pointed out that disfigurement of any exposed part of human body by an act of the accused such as acid throwing shall be considered to be grievous hurt, not necessarily confining the definition of grievous hurt to cases of disfigurement of face or head. He suggested that the definition of cruelty under Sec.498-A IPC shall be suitably amended to include every variety of cruelty against the wife by the husband.

He considered that Sec.354 IPC is well defined and needs no amendment. He expressed fear that any attempt to amend Sec.354 IPC may lead to disastrous results. Regarding section 309 IPC, he opined that if a girl commits suicide on account of cruelty on the part of her paramour, it shall be considered to be an abetment to commit suicide of such girl. Finally he suggested that ragging should be punished.

Hon'ble Shri Justice R.M. Bapat stated that Sec.299 & 300 IPC are well defined and they need no amendment. He disagreed with the opinion of Shri C. Padmanabha Reddy that intention and the knowledge shall be separately punishable

under the first and second limbs of Sec.304 IPC pointing out that intention and knowledge are not tangible objects. He also pointed out that there is no need to amend Sec.353 IPC on the ground that the concept of modesty of women changes from class to class, from place to place and from society to society. He considered that the offence of Sec.354 IPC need not be defined so that the judge shall have a leeway to decide in each case, there was outrage of modesty. He pointed out that shaking hands with a woman of economically highclass society may not be outraging the modesty of that woman, in a metropolitan city like Bombay, whereas it might be outrage of the modesty of the woman in a small town.

Shri D.Subrahmanyam, the Metropolitan Sessions Judge, Hyderabad, agreed with the suggestion of Hon'ble Shri Justice Srivasthava, that Sec.320(6) IPC shall include every part of the body in respect of the definition of grievous hurt and that Sec.309 IPC shall be deleted. Shri G.Yethirajulu, the Chief Judge, City Civil Court, Hyderabad, suggested that in cases of adultery, the wife also shall be made punishable. At that stage Hon'ble Shri Justice K.Jayachandra Reddy, the Chairman of the Law Commission of India intervened to state that it is now proposed to punish even the woman in cases of adultery.

Shri G. Bhavani Prasad, Secretary, Department of Law (Legislative Affairs), Government of Andhra Pradesh, who is a District Judge, submitted that the distinction between

Sec.299 IPC & 300 IPC is very thin in practice. He submitted that the case proposed by Shri M.E.N. Patrudu, is covered by the doctrine of Transferred Malice enunciated under Sec.301 IPC.

He contended that a person who is guilty of murder as defined under Sec.300 IPC falls in one or the other exceptions mentioned in Sec.300 IPC is considered to have committed the lesser offence of culpable homicide not amounting to murder. Shri G. Bhavani Prasad considered it unjust and suggested that for all offences, lesser punishment should be provided when the offence falls within the exceptions provided under Sec.300 IPC.

Shri G.Bhavani Prasad considered that severe punishments should be imposed for grave industrial negligence involving danger to the life of more than one individual such a Bhopal gas tragedy. He also suggested that domestic violence against the servants and servant-maids which is made punishable all over the world shall also be punished with severe sentence. He also suggested that marital rape is punishable even in a conservative society like England and shall be made punishable even in India.

At that stage Hon'ble Shri Justice K.Jayachandra Reddy intervened and asked the delegates to consider the possibility of punishing a woman for committing rape. Shri

G. Bhavani Prasad concluded his submission pointing out that ragging should be punished and pointed out that Sec.303 and Sec.309 IPC shall be deleted.

Once again Hon'ble Shri Justice K. Jayachandra Reddy intervened and pointed out if attempt to commit suicide is not made punishable, perhaps the abetment of the same can not be punished and suicide squads like LTTE squads may go scot free. Shri G. Bhavani Prasad submitted that whereas committing suicide is not punishable the attempt to commit suicide is made punishable; and that on the same analogy though the attempt to commit suicide is not punishable, the abetment of the same may be made punishable.

Hon'ble Shri Justice K.S. Srivasthava tried to synthesise suggesting that an explanation to Sec.309 IPC may be incorporated punishing the abetment while not punishing the attempt to commit suicide.

Shri Narayanarao Deshmukh, the Director of Prosecutions suggested that in case Sec.309 IPC is to be removed from the statute book, activities like self immolation and commission of suicide by jumping from roof tops should be taken care of.

Hon'ble Shri Justice S.S.M. Quadri considered that the commission of suicide is only a process of self destruction but is not a weapon and that is therefor desirable for Sec.309 IPC to continue to hold sway.

Shri M.V.Krishna Rao, the Director of Andhra Pradesh Police Academy considered that Sec.309 IPC should remain in the statute book in order to protect persons from attempting to commit suicide. He also felt that a lover, a paramour or a husband of a lady might not actually abet the lady to commit suicide but might create a situation where the lady becomes inclined to commit suicide and that such cases shall be brought under Sec.306 IPC.

At that stage Hon'ble Shri Justice K. Jayachandra Reddy intervened and pointed out that the situation referred to by Shri M.V. Krishna Rao squarely falls within the ambit of abetment to commit suicide. He further pointed out that there are people who tend to commit suicide on the slightest provocation whereas some persons do not tilt towards the commission of suicide in whatever difficulties they be. He considered that the question will be a question of fact from case to case and there is no need for the amendment of Sec.306 IPC on this count.

Shri Ramakrishna Rao, CBI Prosecutor, pointed out that a Hindu woman who is deserted by the husband suffers from mental harassment by the act of desertion and that such cases shall be made to fall within the Sec.498-A IPC.

Shri P.V.Ramakrishna, CBI Prosecutor, submitted that in case capital punishment is to be abolished by and large, exceptions shall be provided for imposition of capital punishment in extreme cases. He also pointed out that the Head note of Sec.304-A IPC deserves to be altered to include rashness and negligence in the headnote. Hon'ble Shri Justice K. Jayachandra Reddy intervened and pointed out that rashness involves a positive act whereas negligence can be by mere omission also. He further pointed out that Headnotes of many Sections are incorrect and should suitably be amended.

Shri P.V.Ramakrishna further pointed out that a distinction should be drawn between a rash act and a negligent act and that the offence under Sec.304-A IPC deserves much more severe maximum punishment. He also opined that Sec.309 IPC deserves to be repealed and Sec.354 IPC deserves to be redefined.

Shri Seethapathi, a senior criminal lawyer, later pointed out that there is every need to punish the offence of putting any person to indignation. He submitted that a new section as Sec.354-A IPC shall be incorporated to punish the

offence of indignity of a man on the ground that self-esteem of every human being in India, which is in crisis shall be protected.

Hon'ble Shri Justice K. Jayachandra Reddy pointed out that putting any person to indignation might be a violation of the Human Rights and is punishable under the provisions of Human Rights Act.

Shri G.Vithal, a Prosecuting Officer submitted that causing mental pain or mental hurt to a woman by the husband shall also be made punishable by suitably amending Sec.498-A IPC.

Shri Balakrishna, a CBI Prosecutor, submitted that Sec.304-B IPC shall include the Act of making demands even after marriage and that a person who indulged in sexual intercourse with a lady on a promise of future marriage shall be made punishable under Sec.376 IPC. Hon'ble Shri Justice S.S.M. Quadri intervened and pointed out that the situation can be covered by suitably amending Sec.493 IPC. Sri Balakrishna continued that what is modesty covered by Sec.354 IPC and what is obscenity covered by Sections 292 and 294 IPC deserves to be clearly defined. He also considered that Sec.498-B IPC may be enacted in order to protect human dignity.

Shri Dasaradhi, Retired District Judge and part-time Member of the Law Commission of India opined that Section 309 IPC shall be retained in order to punish the persons guilty of abetment to commit suicide. He also pointed out that perceptions of modesty vary from place to place and therefore it is neither desirable nor safe to define modesty under Sec.354 IPC. He agreed with many of the speakers that ragging should be punished with a clear definition of ragging.

He posed a question that should it be necessary to redefine Sec.299 & Sec.300 IPC and should it not be left to the discretion of the judge. If Sec.299 and 300 IPC are to be redefined, Shri Dasaradhi opined that it may be so amended keeping in view the ratio of various cases. He considered that Sec.304-A IPC requires a minimum sentence, though he did not state as to what shall be the minimum sentence.

Shri Pattabhi, Advocate, High Court of Andhra Pradesh, pointed out that the theft of human organs which results in the death of the person shall be brought within the meaning of Sec.299 IPC atleast to create fear in the mind of human organ thieves.

He considered that enhancement of sentence for Sec.304-A IPC does not meet the ends of justice where accused are acquitted day in and day out. He pointed out that mere enhancement of sentence of the offence under Sec.304-A IPC would be a mere paper tiger.

He considered that Sec.498-A IPC is oftentimes used to harass honest husbands and that the Section should be redefined in order to protect honest husbands. He considered that Sec.309 IPC shall stand as it is on the ground that euthanasia (mercy killing) is not recognised in India. He also considered that Sec.306 IPC requires no amendment.

Sri Ramakrishna Rao, CBI Advocate, submitted that Sec. 304-B IPC shall engulf dowry which shall include even an offer by the relatives of the wife to the husband by way of presents for festivals and other occasions. He submitted that Sec. 309 IPC shall be on the statement book.

Sri Pattabhi, once again spoke pointing out that while domestic violence needs to be punished, such cases shall first to be sent for psycho-analysis.

Sri Shivshanker Rao, Trainee District Judge, submitted that the fine that can be imposed for the offence under the Indian Penal Code shall be enhanced and shall be made part of each section, pointing out that circumstances in which the Indian Penal Code was enacted more than 130 years ago can not hold good any more. He pointed out that not only

ragging but eve teasing should also be made punishable. He further submitted that teasing of male persons by women in places like exclusively women's colleges shall also be punished as Adam teasing.

Sri M.Seetharama Murthy, another Trainee District Judge, submitted that Sec. 309 IPC shall be retained while exempting mere attempt to commit suicide from the purview of punishment. He further contended that disobedience of the civil decrees shall be punished severely.

Hon'ble Sri Justice S.S. M. Quadri pointed out that so long as the concept of family exists, it may not be possible legally to punish a husband for forcible sexual intercourse with the wife. He opined that the word "decree" in Sec. 376-A IPC was legally and morally correctly incorporated.

Hon'ble Sri Justice Y. Bhaskar Rao, summed up the deliberations and pointed out that the consensus of the deliberations is that Sec. 309 IPC shall continue to be in the statute book. Hon'ble Sri Justice K. Jayachandra Reddy then thanked all the participants. He pointed out that the Law Commission has recommended for making Sec. 498-A IPC a compoundable offence within Sec. 320 of the Criminal Procedure Code. He also opined that so long as tangible and perceptible difference can not be brought out between knowledge and intention, it may not be possible to redefine

Sec. 299 and 300 IPC. He also drew the attention of the delegates to the fact that Sec. 299 and 300 IPC have a very thin distinction. The second session concluded thereafter at 2.00 p.m.

The Third Session was chaired by Hon'ble Sri Justice R.M. Bapat, Hon'ble Sri Justice K.S. Srivasthave, Hon'ble Sri Justice S.S.M. Quadri, Hon'ble Sri Justice Y.Bhaskara Rao and Hon'ble Sri Justice K. Jayachandra Reddy participated. The remaining aspects pertaining to Offences against the Property. Offences against Public Justice and General Exceptions, General Explanations and other topics were dealt in the session.

Hon'ble Sri Justice R.M. Bapat, initiated discussion in respect of Offences against Property. He pointed out that Chapter 17 of the Indian Penal Code dealing with offences against property also includes some offences against human body also like decoity coupled with murder covered under Sec. 396 IPC. He pointed out that decoity coupled with murder is a dual offence and such offence shall be made punishable with capital punishment compulsorily.

He referred to various scandals and scams and opined that IPC needs to have a separate Chapter to punish the guilty in the scams and scandals.

Sri Narayanarao Deshmukh pointed out that in cases of decoity coupled with murder, if the decoits have knowledge that murder is part of the offence, all the persons shall be made guilty of murder not confining only to the person who committed the murder. He cautioned that this situation should exist only where all the decoits have knowledge that murder was also part of the offence. Thus he pointed out that conjoint responsibility shall be the hallmark for punishing offenders under Section 396 IPC.

With reference to mischief, Sri Narayanarao Deshmukh pointed out that mischief, at present is limited to damage to the property only and that mental injury owing to the damage to the property shall also be included in the definition of mischief. He considered that ragging could be included in the definition of mischief in this back drop. He is of the opinion that separate section dealing with blackmail is not necessary on the ground that Sec. 383 IPC defining extortion includes blackmail. He criticised Sec. 380-A IPC pointing out that it is unjust to punish the persons when the loss results owing to the natural calamities and accidents.

He requested for incorporating a new Section as Sec. 420-A IPC to punish scams. He agreed with suggestion of the Law Commission that persons collecting money allegedly for securing employment are correctly proposed to be punished.

Sri Seethapathy pointed out that offences against property took the dimension of corporate offences like scams. He also cautioned that bank frauds are in the increase. He considered that decoit shall be made punishable in order to curb these tendencies. He also pointed out that criminal breach of trust shall be extended to scams and shall be rated as a grave crime, as grave as murder. He pointed out that such offences shall be punished with not less than 7 years imprisonment and that cheating and criminal breach of trust shall be punished with life imprisonment. Sri Seethapathy further pointed out that Section 320 Cr. P.C. needs to be amended to include the offence of cheating within the list of compoundable offences. He also suggested that special rules shall be made for expeditious trial of cases like cases of Harshad Mehta where the scams involve more than one crore rupees.

Sri Seethapathy also contended that real estate business is in the hands of unsocial elements and that Criminal Courts shall be able to provide interim relief as well as financial relief in such matters. He also highlighted the fact that courts are not releasing converted properties such as article committed theft of being converted into money and items like money in extortion being converted into jewellery, cars etc., and that the law should provide for the return of even such converted properties to the real owners.

Sri M.V.Krishna Rao asked the Chairman where it was going to retain 1978 bill and Hon'ble Sri Justice K. Jayachandra Reddy responded by stating that the covering letter to 1978 bill itself has indicated that the bill can be modified in accordance with the suggestions. Sri M.V. Krishna Rao pointed out that cheating as defined in the 1978 bill is very sound where upon Hon'ble Sri Justice K. Jayachandra Reddy pointed out that burglary and theft are also clearly defined in the 1978 bill.

Sri G.Yethirajulu pointed out that the amount involved in the Criminal Breach of Trust cases deserves to be confiscated and that maximum punishment of death sentence is warranted for the offence of Criminal Breach of Trust. He contended that Criminal Breach of Trust shall be treated as a grave offence.

Sri M.E.N.Patrudu pointed out that the property of the culprits should be attached in Criminal Breach of Trust cases by suitably amending Sections 406, 409 and 410 IPC.

Sri P.V.Ramakrishna pointed out that Criminal Law Amendment Act provides for attachment of properties in Criminal Breach of Trust and cheating cases. He also pointed out that the Criminal Law Amendment Ordinance Provided for confiscation of attached property. By referring to Sec. 16, P.C. Act, Sri P.V. Ramakrishna pointed out that matters to be taken note of by that courts in fixing the quantum of fine

shall be stated in cases of misappropriation, Criminal Breach of Trust and cheating. Hon'ble Sri Justice K. Jayachandra Reddy intervened and pointed out that Sec. 53 IPC includes forfeiture of property as one of the modes of punishment. Sri M.E.N. Patrudu intervened and submitted that the forfeiture can not be resorted to unless the property is received in the court.

Sri Balakrishna pointed out that Sec. 452(5)Cr. P.C. can be taken advantage of in cases of forfeiture and that Criminal Law Amendment Act is not of much help. Sri P.V. Ramakrishna interfered and pointed out that forfeiture can be made a part of punishment for every offence against property including cheating. Hon'ble Sri Justice S.S.M. Quadri intervened and pointed out that the concept of forfeiture deprives the owner from getting back his property and therefore forfeiture can not be resorted to in every property offence.

Sri Ramakrishna Rao pointed out that NDPS Act and prevention of Corruption Act provided for attachment as well as forfeiture of property of the accused. Sri P.V. Ramakrishna intervened and pointed out that properties are forfeited even under Essential Commodities Act.

Sri Vithal submitted that transactions relating to securities act, 1992 provides for the attachments of property automatically and that such a provision be incorporated in

the Indian Penal Code. He also suggested that the presumption of guilt can be created in cases of scams, cheating and Criminal Breach of Trust.

Sri Pattabhi pointed out that the Indian Penal Code did not define property but merely defined movable property. He cautioned that creation of general forfeiture would be playing with the fine and submitted that no special provision of forfeiture is needed in view of Sec. 53 IPC. He opined that the judicial discretion can be used whether to forfeit or not to forfeit property so that the provisions of forfeiture are not abused.

Sri C.Padmanabha Reddy pointed out that at present there shall be a dishonest intention at the time of the commission of the offence for making the offender punishable for the offence under Sec. 420 IPC should be suitably amended to punish those persons who develop dishonest intention at a later point of time albeit not at the time of the actual transaction.

Sri Ramakrishna suggested that Electricity should be brought within the definition of movable property for being punished under Sec. 379 IPC. Hon'ble Sri Justice K. Jayachandra Reddy opined that electricity is part of movable property whereupon Sri Ramakrishna submitted that judicial opinion is that electricity is not movable property and consequently its theft is not punishable under Sec. 379 IPC.

Hon'ble Sri Justice S.S.M. Quadri pointed out that electricity is movable property as per the Sale of Goods Act whereupon Sri Ramakrishna submitted that a clarification may be incorporated in the Indian Penal Code to include electricity within the meaning of movable property.

Hon'ble Sri Justice K.S.Srivasthava pointed out that Sec. 27 IPC provides that possession by wife or servant shall be the possession of the husband or a master as the case may be, which deserves to be reconsidered. Sri Vithal suggested that the freezing of the properties of accused in cases of cheating, misappropriation and Criminal Breach of Trust might be considered.

The session that took up Offences relating to the Public Justice. Hon'ble Sri Justice K.S. Srivasthava opened the discussion pointing out that chapter XI IPC contains 41 Sections. He pointed out that while false evidence leads to devastating results, the sanctity of oath is lost. He pointed out that Secs.463 & 464 IPC dealing with forgery should be redefined clearly and that Sec. 466 and 467 IPC deserve to be combined. He requested for a severe punishment of the offence under Sec. 228 IPC in order to discourage cowering down of judges and that the sentence for Sec. 228 IPC shall be a maximum of 2 years imprisonment and a fine of Rs. 10,000/- He pointed out that Sec. 229 IPC is redundant. He requested that Sec. 276 IPC should be amended and that 275 IPC shall be amended deleting the word "knowingly".

Definition of documents should be amended and should be incorporated in Sec. 464 IPC to include dishonest manipulation of court records according to Hon'ble Sri Justice K.S. Srivasthava.

Sri M.V.Krishna Rao, pointed out that Sec. 198-A IPC and Section 198-B IPC suggested by the 1978 bill are good amendments. He pointed out that Sec. 229-A IPC as proposed by 1978 bill needs to be further amended to include persons jumping bail even during investigation stage and during pre-trial stage. He agreed with the suggestion of Hon'ble Sri Justice K.S. Srivasthava that provisions relating to false evidence and public justice should be used properly.

Sri P.V.Ramakrishna pointed out that since the object of Sections 198-A and 198-B IPC are intended to prevent falsification of medical certificate, other false certificates like date of birth and community certificates as well as agricultural value certificates deserve to be included in the two Sections. Sri Balakrishna pointed out that by omitting the word "Public" in Sec. 218 IPC the purpose may be served. Hon'ble Sri Justice K. Jayachandra Reddy intervened and pointed out that medical certificates and caste certificates created havoc and that the use of such certificates might amount to cheating whereas the issuance of such certificates might be covered by Sections 198-A, 198-B IPC. Sri P.V. Ramakrishna submitted that persons who issued such false certificates are out of the purview of cheating

whereas Hon'ble Sri Justice K. Jayachandra Reddy opined that the creation of false certificate is punishable under IPC. Sri D. Subrahmanyam pointed out that Sec. 229-A IPC should be made applicable to sureties as well as accused. Sri M.E.N. Patrudu agreed with the suggestion of Sri D. Subrahmanyam. Sri P.V. Ramakrishna suggested that the proposed Sec. 198-A and 198-B IPC deserve to be Sections 197-B and 197-C and that the punishment shall be more than one year. Hon'ble Sri Justice K. Jayachandra Reddy opined that one year's imprisonment for a medical doctor is a grave punishment and that in fact it is very difficult to prove a false medical certificate. Sri M.E.N. Patrudu submitted that fraud played on court shall be made punishable when it is committed by an advocate and that Sec. 193 IPC is not sufficient to punish hostile witnesses. Sri Pattabhi pointed out that no two doctors ever agree and that Sec. 198-A IPC is not a desirable Section where the Section 463 IPC adequately takes care of the the situation. He opined that medical profession shall be given a leewage. He considered that Sec. 228 IPC as it stands now is an excellent balance of judicial restraint.

The last part of the session was devoted to amendments relating to General Exceptions, General Explanations and other miscellaneous topics. Hon'ble Sri Justice S.S.M. Quadri opened that the discussion pointing out that Chapters II, III and IV IPC deal with General Explanations and General Exceptions and that fraud falling

within Chapter II IPC required redefinition. He also pointed out that many definitions covered in Chapter II are stated in the General Clauses Act and that such of those definitions finding place in the General Clauses Act deserve to be repealed from the provisions of the Indian Penal Code. He cautioned that it is difficult to define fraud. He also pointed out that more severe punishments which are proposed by 1978 bill deserve to be included in Sec. 53 IPC and that each punishment Section however shall specify those newly to be incorporated punishments.

In respect of General Exceptions, he threw open a debate for discussion as to whether all offences which are punishable with a maximum sentence of 3 years imprisonment or more be included in Sec. 75 IPC. He opined that Exception to Sec. 99 IPC deserves to be deleted and opined further that the Right of Private Defence covered by Section 100 IPC shall be extended to abduction cases also.

Sri M.V.Krishna Rao agreed with the suggestion of Hon'ble Sri Justice S.S.M. Quadri that the restriction imposed by Sec. 99 IPC should be deleted as the concept of the Right of Private Defence which is based on the Right of each person to live should have a leeway. He contended that it may not be possible for the victim at the time of the incident to decide whether to protect himself or to run to a police station for protection. He considered that India is a timid society and that Sec. 99 IPC may never be misused even

without the exception as it stands now in Sec. 99 IPC. He considered that Sec.103 IPC shall be retained in the statute as much as Sec. 100 IPC engulfing cases of abduction also. He explained that Sec. 103 IPC is rarely resorted to in India and need not be removed from the statute book.

Sri C.Padmanabha Reddy opined that Sec. 86 IPC shall not only presume knowledge but shall also include a presumption of intention when an act is committed by a person under the influence of intoxication. Hon'ble Sri Justice S.S. M. Quadri intervened and pointed out that intention can be proved from the circumstances of each case. Hon'ble Sri Justice K. Jayachandra Reddy intervened and questioned as to whether Sec. 86 IPC is necessary at all on the face of Sec. 85 IPC. He pointed out that the Indian Penal Code wanted is safeguard murderers under intoxication and that the Code merely supplies knowledge to a drunkard which is necessary to be proved otherwise, whereas intention can be inferred from situations like repeated attempts and the like.

Sri Seethapathy pointed out that an explanation needs to be added to Sec. 84 IPC since several offences are committed due to psychological and neurotic causes. He considered that psychopathological aspects need be included in Sec. 84 IPC.

Sri Pattabhi pointed out that the ingredients of each offence should be grasped by the investigating officers correctly and that provisions should be created making it compulsory for the police to take the help of financial experts, medical experts and other experts in cases of forgery, manipulation of accounts and the like.

Hon'ble Sri Justice K.Jayachandra Reddy summed up the discussion by pointing out that human dignity is involved in the exercise of the Right of Private Defence and that Sec. 99 IPC however is intended to curb the use of Right of Private Defence for situations like possession of vacant barren land. He questioned the propriety of a victim in not going to lawful authority in ordinary and non-urgent cases pointing out that one's freedom ends where another person's right begins. He declared that no person can kill another person for mere violation of the rights. Hon'ble Sri Justice K.Jayachandra Reddy finally thanked all the delegates for taking active part in the deliberations.

The following persons attended the workshop:

1. Hon'ble Mr. Justice K. Jayachandra Reddy, Chairman, Law Commission of India.
2. Hon'ble Mr. Justice Y. Bhaskar Rao, Judge, A.P. High Court.
3. Justice R.M. Bapat, Judge, A.P. High Court
4. Justice K.S. Shivasthava, Judge, A.P. High Court
5. Justice S.S.M. Quadri, Judge, A.P. High Court
6. Mrs. C. Suseela Devi, Public Prosecutor, A.P. High Court
7. Shri G.Krishnamurthy, Member, Law Commission of India
8. Shri C. Padmanabha Reddy, Senior Advocate
9. Shri Narayanarao Deshmukh, Director of Prosecutions
10. Shri P. Seethapathi, Advocate
11. Shri M.V. Krishna Rao, Director of A.P. Police Academy
12. Shri P.V. Ramakrishna, Advocate
13. Shri T.S.V. Prasad, Joint Director, National Police Academy
14. Shri T. Balareddy, Senior Advocate
15. Shri M.E.N. Patrudu, Registrar (Vigilance)
16. Shri G. Yethirajulu, Chief Judge, City Civil Court
17. Shri D. Subrahmanyam, Metropolitan Sessions Judge
18. Shri G. Bhavani Prasad, Law Secretary
19. Shri H.J. Dora, Director General of Police, Andhra Pradesh
20. Shri Aravind Rao, Inspector General
21. Shri Dinakara Prasad
22. Shri G. Vithal, Prosecutor
23. Shri Ramakrishna Rao, Prosecutor

24. Shri Balakrishna P., Prosecutor
25. Shri P. Satyanarayana Raju, Advocate
26. Shri B. Pattabhi, Advocate
27. Shri K.G. Shanker, Senior Faculty Member of the A.P. Judicial Academy