CHAPTER VA

CRIMINAL CONSPIRACY

[Chapter VA comprising sections 120A and 120B was enacted by the Indian Criminal Law Amendment Act, 1913 (Act VIII of 1913). It was introduced into the Criminal Law of India and Pakistan a new offence *viz.*, the offence of criminal conspiracy. Hitherto, criminal conspiracy was punishable only as a species of abetment. Now it has been made a substantive offence under the Penal Code.]

Criminal Conspiracy.—When two or more persons agree to do, or cause to be done (*i*) an illegal act, or (*ii*) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy : provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object. (S. 120-A).

The ingredients of the offence of criminal conspiracy are :

(1) that there must be an agreement between the persons who are alleged to conspire ;

(2) that the agreement should be (*i*) for doing an illegal act, or (*ii*) for doing by illegal means an act which may not itself be illegal.

To constitute a criminal conspiracy there must be an agreement of two or more persons, to do an act which is illegal or which is to be done by illegal means. The gist of the offence is the bare engagement of association to break the law, whether any act be done in pursuance thereof by the conspirators, or not.[1] The object in view or the methods employed should be

1. *Md. Ismail* (1936) Nag. 152 ; *Md. Yaqub v. Crown* (1954) 7 D. L. R. 75.

illegal as defined in section 43. A distinction is drawn between an agreement to commit an offence and an agreement of which either the object or the methods employed are illegal but do not constitute an offence. In the case of the former, the criminal conspiracy is completed by the act of agreement ; in the case of the latter, there must be some act done by one or more of the parties to the agreement to effect the object thereof, *i.e.* there must be an overt act.

Punishment for criminal conspiracy.—Section 120-B deals with the punishment for criminal conspiracy. It provides that one who is a party to a criminal conspiracy to commit an offence punishable with death, transportation or rigorous imprisonment for a term of 2 years or upwards, shall, where there is no express provision for the punishment of such a conspiracy, be punished as an abettor of such offence. In case of criminal conspiracy other than a criminal conspiracy to commit an offence he shall be punished with imprisonment of either description for a term of six months or with fine or with both.

Distinction between Criminal Conspiracy and Abetment.—

(1) Conspiracy is a form of abetment. Abetment is committed in various ways enumerated in sections 107-108, and conspiracy is one.

(2) Abetment is a genus of which the offence of conspiracy is a species.

(3) Abetment is not *per se* a substantive offence ; while criminal conspiracy is a substantive offence by itself and is punishable as such.

CHAPTER VI

OF OFFENCES AGAINST THE STATE.

[Chapter VI is comprised of 13 sections. Sections 121, 121A and 122 deal with preparation, conspiracy and the actual waging of war against Pakistan. Section 123 deals with abetment by criminal concealment of arms with intent to facilitate design to wage war. Section 123A penalises for condemnation of the creation of Pakistan, and advocacy of abolition of its sovereignty. Section 124 deals with assault on President and Governor with intent to compel or restrain the exercise of any lawful power. Section 124A deals with sedition. Sections 125-127 refer to hostile acts against any Asiatic Power in alliance with Pakistan. Sections 128-130 provide for punishment of public servant for allowing and aiding prisoner of State or war to escape. Therefore, this Chapter is directed to the securing of external and internal peace.]

Classification of offences against the State.—Offences against the State can be classified under the following groups :—

1. Offences against Pakistan.
2. Offences concerning the relations of Pakistan with other Governments.
3. Offences concerning custody of prisoners of State or of War.

1. Offences against Pakistan.—(*i*) Waging or attempting to wage war or abetting waging of war against Pakistan. Punishment. – Death or transportation for life and fine. (S. 121).

(*ii*) Conspiracy (a) to commit, within or without Pakistan, offences punishable by section 121, or (b) to overawe, by means of criminal force or the show of criminal force, the Central Government or any Provincial Government. Punishment.— Transportation for life or any shorter term or imprisonment of either description for 10 years and fine. (S. 121A).

(*iii*) Concealing men, arms or ammunition, or making any other preparation with a view to waging war against Pakistan.

Punishment.—Transportation for life or imprisonment of either description for 10 years and fine. (S. 122).

(*iv*) Concealing by any act or illegal omission the existence of a design to wage war against Pakistan, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war. Punishment.—Imprisonment of either description for 10 years and fine. (S. 123).

(*v*) Condemnation of the creation of Pakistan and advocacy of abolition of its sovereignty. Punishment.—Rigorous imprisonment for 10 years and fine. (S. 123A).

(*vi*) Assaulting the President and the Governor with intent to compel or restrain the exercise of any lawful power. Punishment.—Imprisonment of either description for 7 years and fine. (S. 124).

(*vii*) Sedition. Punishment.—Transportation for life or any shorter term, or imprisonment for 3 years with or without fine or fine only. (S. 124A).

The ingredients of the offence of waging war against Pakistan.—In order to constitute an offence of waging or attempting to wage war under section 121 of the Pakistan Penal Code it is necessary to show that (*i*) the accused waged war, or attempted to wage such war or abetted the waging of such war, and (*ii*) that such war was against Pakistan. Thus, A joins an insurrection against Pakistan. A has committed the offence of waging war as defined in this section.

Sedition.—Sedition consists in exciting or attempting to excite others certain bad feelings towards the Government. Section 124A of the Pakistan Penal Code embodies the law of sedition. It provides that "whoever by words either spoken or written or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Central or Provincial Government established by law shall be punished with transportation for life or any shorter term, to which fine may be added, or

with imprisonment which may extend to 3 years, to which fine may be added, or with fine."

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

A person may no doubt lawfully express his opinion even in strong terms on public matter however distasteful it might be to others, but this does not entitle him to do so in a language which is calculated to endanger feelings of hatred or contempt or to rouse passions to such an extent as to incite listeners to rebellion, insurrection etc.[1]

The essential ingredients of sedition are: (1) Bringing or attempting to bring into hatred or contempt, or exciting or attempting to excite disaffection towards the Central or Provincial Government of Pakistan, and (2) such act or attempt may be done (*i*) by words, either spoken or written, or (*ii*) by signs, or (*iii*) by visible representation.

The essence of the crime of sedition consists in the intention with which the language is used. The intention of a speaker, writer or publisher, may be gathered from the particular speech, article or letter or words used.[2] The requisite intention cannot be attributed to a person if he was not aware of the contents of the seditious publication. It is not necessary that the acts or words complained of must either incite to disorder, or must be such as to satisfy reasonable men that that is their intention or tendency. Mere existence of feeling of hatred is not punishable unless an

1. *State v. Sardar Ataullah Khan* (1966) 19 D.L.R. (SC) 185.
2. *Ibid*; *Z. A. Sulleri v. Crown* P.L D. 1954 (Sind) 80.

attempt is made to excite such feelings in others and the hatred and contempt must be hatred and contempt of the State, or of the established Government.

2. Offences concerning the relations of Pakistan with other Governments.—(*i*) Waging or attempting to wage, or abetting the waging of war against the Government of any Asiatic Power in alliance or at peace with Pakistan. Punishment.—Transportation for life with or without fine or imprisonment of either description for 7 years with or without fine, or fine only. (S. 125).

(*ii*) Committing, or preparing to commit, depredation on the territories of any Power in alliance, or at peace, with Pakistan. Punishment.—Imprisonment of either description for 7 years and fine as well as forfeiture of any property used or intended to be used in, or acquired by; such depredation. (S. 126).

(*iii*) Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126. Punishment.—Same as under section 126. (S. 127).

3. Offences concerning custody of prisoners of state or of War.—(*i*) Public servant voluntarily allowing any State prisoner or prisoner of war to escape from confinement. Punishment.—Transportation for life or imprisonment of either description for 10 years and fine. (S. 128).

(*ii*) Public servant negligently suffering any State prisoner or prisoner of war to escape from confinement. Punishment.—Simple imprisonment for 3 years and fine. (S. 129).

(*iii*) Knowingly aiding or assisting any state prisoner or prisoner of war in escaping from lawful custody, or rescuing or attempting to rescue, any such prisoner, or harbouring or concealing any such prisoner who has escaped from lawful custody or offering or attempting to offer any resistance to the recapture of such prisoner. Punishment.—Transportation for life or imprisonment of either description for 10 years and fine. (S. 130).

Explanation.—A State prisoner or prisoner of war, who is permitted to be at large on his parole within certain limits in Pakistan, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII

OF OFFENCES RELATING TO THE ARMY, NAVY AND AIR FORCE.

The following offences relating to the Army, Navy and Air Force are dealt with by the Pakistan Penal Code under this Chapter :—

(1) Abetting mutiny or attempting to seduce a soldier, sailor or airman from duty is punishable with transportation for life, or with imprisonment of either description for 10 years and fine. (S. 131).

(2) For abetment of mutiny, if mutiny is committed in consequence thereof, the abettor is punishable with death or transportation for life or imprisonment of either description for 10 years and fine. (S. 132).

(3) Abetment of an assault by a soldier, sailor or airman on his superior officer, when in execution of his office, is punishable with imprisonment of either description for 3 years and fine. (S. 133).

(4) Abetment of such assault by soldier, sailor or airman, if the assault is committed, is punishable with imprisonment of either description for 7 years and fine. (S. 134).

(5) Abetment of desertion of soldier, sailor or airman is punishable with imprisonment of either description for 2 years or with fine or both. (S. 135).

(6) Harbouring deserter is punishable with imprisonment of either description for 2 years or with fine or both. (S. 136).

(7) For concealment of a deserter on a merchant vessel through the negligence of the master or person in charge of the vessel, the master or the person in charge is liable to a fine of Rs. 500.(S.137).

(8) Abetment of an act of insubordination by soldier, sailor or airman is punishable with imprisonment of either description for six months or with fine or both. (S. 138).

Sections 131-138 do not apply to a person who is subject to the Pakistan Army Act, 1952, the Naval Discipline Act, 1934, and the Air Force Act, 1953. (S. 139).

(9) A person who is not in the Defence forces but wears the garb or carries token used by soldier, sailor or airman is punishable with imprisonment of either description for 3 years or with fine which may extend to Rs. 500 or both. (S. 140).

CHAPTER VIII

OF OFFENCES AGAINST THE PUBLIC TRANQUILITY.

There are 22 sections in this Chapter which deal with those offences which fall between offences against the State and offences against the persons. They may be classified under four heads :

1. Unlawful assembly.
2. Rioting.
3. Promoting enmity between classes.
4. Affray.

1. Unlawful Assembly.—Section 141 of the Pakistan Penal Code defines what is an unlawful assembly. It provides :

An assembly of 5 or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

(1) To overawe by criminal force, or show of criminal force (*i*) the Central or (*ii*) any Provincial Government or (*iii*) legislature or (*iv*) any public servant in the exercise of the lawful power of such public servant ; or

(2) To resist the execution of any law, or of any legal process; or

(3) To commit any mischief or criminal trespass, or other offence ; or

(4) By means of criminal force, or show of criminal force, to any person (*i*) to take or obtain possession of any property, or (*ii*) to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or (*iii*) to enforce any right or supposed right ; or

(5) By means of criminal force, or show of criminal force, (*i*) to compel any person to do what he is not legally bound to do, or (*ii*) to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

It may be seen from the definition that there must be at least 5 persons having the common object before the constructive guilt under section 142 can arise. The essence of the offence is the common object of the persons forming the assembly. Thus, where more than 5 persons were charged with being members of an unlawful assembly but only 4 of them were found to have taken part in the assembly it was held that none of the accused could be convicted.[1]

Who is a member of an unlawful assembly.— Section 142 of the Pakistan Penal Code gives the definition of a member of an unlawful assembly. It runs thus : "Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly." Punishment.—Imprisonment of either description for 6 months or fine or both. (S. 143).

The following are the essential ingredients of this section :—

(1) There must be a meeting of 5 or more persons.

(2) The common object of the meeting must be any of the 5 objects mentioned in section 141.

(3) The accused must intentionally join the meeting—(*i*) having knowledge of its object, or, (*ii*) he must continue therein after having had that knowledge.

If a person attends a meeting innocently, but he continues therein after he is made aware of its illegal purpose, he is (so far as his legal responsibility is concerned) in the same predicament as if he had attended the meeting with previous knowledge and approval of its object. Although individuals may in the first instance have associated themselves with a mob from motives perfectly innocent, nevertheless, if the mob becomes an unlawful assembly, and individuals in question take part in its proceedings, they will be liable as members of an unlawful assembly.

Liability of a member of an Unlawful Assembly.— Section 149 of the Pakistan Penal Code lays down that "if an offence

1. *Emperor v. Abdul Qadir* (1930) 32 Cr. L. J. 249.

is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence."

The primary basis of a constructive charge under section 149 is the existence and membership of an unlawful assembly and the commission of an offence by a member thereof in prosecution of the common object or such as the members knew it to be likely to be committed in prosecution of such object.[1]

The phrase 'in prosecution of the common object' in the two clauses have different shades of meaning and these words 'in prosecution of the common object' in the first clause must be strictly construed as equivalent to 'in order to attain the common object.' When that is the case, every person, who is engaged in prosecuting the same object, may well be held guilty of an offence which fulfils or tends to fulfil the object which he is himself engaged in prosecuting.[2]

And an offence will fall within the second clause if the members of the assembly, for any reason, knew beforehand that it was likely to be committed in the prosecution of the common object, though not knit thereto by the nature of the object itself.[3]

The object of section 149 is that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. It is clear that a person not sharing the common object, cannot be liable constructively. Thus a member of an unlawful assembly retiring

1. *Rahman Sardar v. Crown* (1955) 7 D. L. R. 572.
2. *Janab Ali v. State* (1960) 12 D. L. R. 808 : 1961 P. L. D. (Dac) 430.
3. *Ibid.*

from the assembly and taking no further part cannot be liable for subsequent murder committed by the assembly.

The following conditions must be fulfilled before a person can be held responsible under section 149 :—

(1) There must be an unlawful assembly.

(2) The offence should have been committed by a member of such assembly.

(3) The offence should have been committed either (*i*) in prosecution of the common object of the assembly, or, (*ii*) the offence must be such as the members knew to be likely to be committed in prosecution of their common unlawful object.

(4) The accused must be a member of the assembly at the time the offence was committed.

Difference between section 34 and section 149.— Section 34 of the Pakistan Penal Code provides that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons will be liable for that act as if the act was done by him alone. In this case it is necessary to prove that the act was done in furtherance of the common intention of the several persons. There must be a pre-arranged plan or a prior meeting of minds in doing the act.

Under section 149 of the Pakistan Penal Code if an offence is committed by any member of an unlawful assembly in furtherance of a common object then each of the members of the unlawful assembly irrespective of his participation in the commission of the act, shall be constructively liable for the act as if he had actually participated in committing it. In this case two conditions must be fulfilled : (1) There must be an unlawful assembly and (2) any member of such assembly must have committed the offence in prosecution of the common object of the unlawful assembly.

The first difference is that under section 34 the act must be the result of a pre-arranged plan or of a common intention. But under section 149 no common intention is necessary so far as the particular offence committed is concerned. If the offence

is committed in prosecution of the common object every member of such assembly shall be liable for the offence even though he did not intend to commit it or did not participate in the commission of it.

Secondly, under section 34 the number of persons entertaining the common intention is immaterial. But under section 149, the common object must have been entertained by all the members of the unlawful assembly *i.e.* by 5 or more persons.

Thirdly, section 34 enunciates the principle of liability but does not create an offence, while section 149 creates a specific offence.

Lastly, the common object of the unlawful assembly must be one of the objects mentioned in section 141, while the common intention may be any intention, for the purpose of section 34.

2. **Rioting.**—Section 146 lays down that whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 147). If armed with deadly weapon—Imprisonment of either description for 3 years or fine or both. (S. 148).

The essential ingredients that constitute the offence of rioting are :

(1) That the accused persons being five or more in number formed an unlawful assembly ;

(2) That they were animated by a common object ;

(3) That force or violence was used by the unlawful assembly or any member of it ; and

(4) That such force was used in prosecution of the common object.

If the common object of an assembly is not illegal, it is not rioting even if force is used by a member of it. If a number of persons assembled for any lawful purpose suddenly quarrel without any previous intention or design, they do not commit riot.[1]

1. *Khajah Noorul Hossein v. C. Fabre Tonnerre* (1875) 24 W. R. 26.

Distinction between Riot and Unlawful Assembly.—A riot is an unlawful assembly in a particular state of activity, which activity is accompanied by the use of force or violence. It is only the use of force that distinguishes rioting from an unlawful assembly. Two things are, therefore, necessary to convert an unlawful assembly into a riot, *viz.*, (a) the use of force or violence by an unlawful assembly or any member thereof and (b) such force or violence being used in prosecution of the common object of such assembly.

Distinction between Riot and Waging War.— (1) Riot is an offence which falls under offences against public tranquility, while waging war is an offence against the State.

(2) Riot is not such a serious offence as waging war and consequently the latter is more severely punished.

(3) A riot is committed for a private purpose, but the object of waging war is of a general nature.

3. Promoting enmity between classes.—Section 153A deals with the law on the subject. It provides that whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of the citizens of Pakistan, shall be punished with imprisonment which may extend to two years, or with fine, or with both.

Explanation.—It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between the different classes of the citizens of Pakistan.

4. Affray.—When two or more persons, by fighting in a public place, disturb the public peace, they are said to commit an affray. (S. 159).

The word 'affray' is derived from the French word 'affraier', to terrify, and in a legal sense it is taken for a public offence to the terror of the people. The essence of the offence consists in the terror it is likely to cause to the public.

Punishment.– Imprisonment of either description for one month or a fine of Rs. 100 or both. (S. 160).

The ingredients of section 159 are : (1) A fight between two or more persons ; (2) such fight must be in a public place ; and (3) the fight must disturb the public peace. Mere abusing or quarrelling without exchanging blows will not make this section applicable. It contemplates a definite breach of peace or an assault.

Difference between Riot and Affray.—A riot differs from an affray in the following respects :–

(1) A riot can be committed only by five or more persons, while an affray can be committed by two or more persons.

(2) A riot can be committed even in a private place but an affray cannot be committed in a private place.

(3) In a riot every member of the unlawful assembly is punishable, although some of them may not have personally used force or violence ; that is not so in the case of an affray because only those actually engaged are liable.

(4) An affray is sudden, while a riot is premeditated.

(5) The punishment awarded in the case of riot is imprisonment of either description for two years, or fine, or both, but in the case of an affray it is one month or fine up to Rs. 100 or both.

Difference between Affray and Assault.—(1) An affray must be committed in a public place, but an assault may be committed either in a public or a private place.

(2) An affray is committed by two or more persons, while an assault is made by the making of any gesture or preparation by a person to cause another person present to apprehend that the person making it is about to use criminal force to him.

(3) An affray is an offence against public tranquility, while an assault is an offence against the person of an individual.

(4) The punishment provided for affray is imprisonment for one month or fine up to Rs. 100 or both, while in the case of an assault it is 3 months or fine up to Rs. 500, or both. (S. 352).

CHAPTER IX

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS

Chapter IX deals with two classes of offences, of which one can be committed by public servants alone, and the other comprises offences which relate to public servants, though they are not committed by them. This Chapter may be discussed under the following groups :—

1. Bribery or taking gratification.
2. Offences by public servants.
3. Offences relating to public servants.

1. Bribery or taking gratification.—The offence of bribery is defined in section 161 of the Pakistan Penal Code. In this section it is termed "taking gratification." It lays down that whoever, being or expecting to be a public servant, (1) accepts or obtains, or agrees to accept, or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, (2) as a motive or reward (*i*) for doing or forbearing to do any official act or (*ii*) for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or (*iii*) for rendering or attempting to render any service or disservice to any person, with the Central or any Provincial Government or Legislature, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to 3 years, or with fine, or with both.

Explanations.—"Expecting to be a public servant." If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification." The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration." The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the authority by which he is employed, to accept.

"A motive or reward for doing." A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.— (*a*) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*) A, holding the office of Consul at the Court of a foreign Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the Government of Pakistan. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(*c*) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

The ingredients of the offence of bribery or taking gratification are :

(1) That the accused, when the offence was committed, was, or expected to be, a public servant ;

(2) That he accepted, obtained, agreed to accept, or attempted to obtain from some person a gratification whether for himself or any other person ;

(3) That such gratification was not a legal gratification due to him ;

(4) That the gratification was accepted by him as a motive or reward—(*i*) for doing, or forbearing to do an official act, or (*ii*) for showing, or forbearing to show, favour or disfavour in the exercise of his official function, or (*iii*) for rendering or attempting to render any service or disservice to some one with the Central or any Provincial Government or the Legislature, or with any public servant.

To constitute an offence under section 161 it is not necessary that the public servant must be capable of doing favour. It is enough if the person giving the bribe thinks that the public servant has opportunity to show him favour.[1] It is also an offence if the bribe is given for past favour.[2] Offence is complete if the bribe-giver is led to believe that the act would go against him if he does not give bribe[3]. Payment of money to an officer as donation to a public institution in which the officer is interested would amount to illegal gratification within section 161 only if the payment was made either as a motive for the offence showing a favour to the accused or as a reward for having already shown the favour. Again for a public servant to be guilty under section 161 it is not necessary that he should accept gratification for himself. It does not matter if he accepts gratification for any other person.

Under section 161 and the corresponding section 5(2) of the Prevention of Corruption Act, 1947, an attempt to obtain bribe is punishable equally with an actual receipt of the same.[4] When the accused attempted to receive bribe and in order to get it he put pressure on the complainant and his attempt would have succeeded but for certain circumstances. It was held[5] that the offence of attempt under section 161 of the Pakistan Penal Code

1. *Syed Jafar Shah v. Crown* 7 P.L.D. 1955 (Baluch) 6 ; see also *Muzaffar Ahmed v. State* (1961) 13 D.L.R. 219 : (1962) P.L.D. (Dac) 16.
2. *Ashit Kumar Aditya v. State* (1961) 13 D.L.R. 270 : (1962) P.L.D. (Dac) 441 ; *Abdul Bari v. Crown* (1955) 7 D.L.R. 457.
3. *Ibid.*
4. *State v. Illahi Bux* (1959) 11 D. L. R. (SC) 103.
5. *Ibid.*

was complete. To ask directly or indirectly for a bribe is an attempt to obtain it. A person offering bribe is guilty of abetting this offence by way of instigation. If the giver is present while the bribe is given, he is punishable as if he had taken the bribe himself.[1] Thus the giver and the taker of the bribe are equally punishable under this section.

2. Offences by public servants.—The offences by public servants made punishable under the Pakistan Penal Code are :

(1) Taking gratification other than legal remuneration by a public servant in respect of an official act. Punishment.—Imprisonment of either description for three years or fine or both. (S. 161).

(2) Abetment by public servants of offences mentioned in sections 162 and 163. Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 164).

Thus, A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Sections 162 and 163 apply to cases where a person (not a public servant) accepts bribe or gratification from a third person for the purpose of inducing, (*i*) by corrupt or illegal means (S. 162), or (*ii*) by exercise of personal influence, a public servant to do or omit to do an official act. (S. 163),

(3) Obtaining any valuable thing, without consideration, by a public servant from a person concerned in any proceeding or business transacted by such public servant. Punishment.—Imprisonment of either description for three years or fine or both. (S. 165).

Illustrations.—(*a*) A, a Collector, hires a house of Z, who has a settlement case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if

1. S. 114 P. P. C.

the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*) A, a Judge, buys of Z, who has a case pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Section 165 penalises the acceptance of any valuable thing without due consideration by a public servant from persons with whom he is officially connected. The mere taking of presents by a public servant, when it cannot be proved that such presents were corruptly taken, has been made penal by this section. It differs from section 161 in this that in section 161 the present is taken as a motive or reward for abuse of office, while in section 165 the question of motive or reward is immaterial. Purchase of things at a fair price is certainly not prohibited.

(4) Knowingly disobeying law by a public servent with intent to cause injury to any person. Punishment.—Simple imprisonment for one year or fine or both. (S. 166).

Thus A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

To constitute an offence under section 166 there must be wilful disobedience of an express direction of law. A disobedience to a departmental order or a breach of a departmental rule is not punishable under this section (compare with section 217 P. P. C).

An interpreter of a document who, having been directed by the Court to keep its contents secret, disobeys the direction, commits an offence under this section.[1]

1. *See section* 162 *of the Evidence Act.*

A Postal Peon absents himself from duty without leave with intent to cause injury and inconvenience to the public. He has committed an offence under the Postal Office Act and not under this section, for, the injury to be caused must be to a particular person and not to the public.

(5) Framing or translating a document, by a public servant in a way which he knows or believes to be incorrect, intending to cause injury to any person. Punishment.—Imprisonment of either description for three years or fine or both. (S. 167).

"Preparation or translation of any document" does not include "copying." Section 167 punishes public servants who, having been officially directed to perpare or translate a document knowingly prepare or translate it falsely intending to cause injury to any particular person. A mere mis-translation or mistake due to ignorance or negligence is no offence. The falsification must be knowingly made with the intention of causing injury.

(6) Engaging in trade by a public servant, when legally bound not to do. Punishment.—Simple imprisonment for one year or fine or both. (S. 168).

(7) Purchasing, or bidding for, property by a public servant (either in his own name or in the name of another or jointly, or in shares with others), when legally bound not to do so. Punishment.—Simple imprisonment for two years or fine or both. Property, if purchased, shall be confiscated. (S. 169).

3. Offences relating to public servants.—Offences relating to public servants which are made punishable under the Pakistan Penal Code are :

(1) Taking gratification in order to influence a public servant by corrupt or illegal means. Punishment.—Imprisonment of either description for three years or fine or both. (S. 162).

In order to substantiate an offence under section 162 it is necessary to show that the money that was accepted was intended for the purpose, of being paid by way of gratification as a motive or reward for inducing by corrupt or illegal means a

public servant but it is not necessary that the gratification must have been intended to be paid to the person who accepted the money. It is sufficient if the person accepting the money knows that the object for which the money is to be used is for the purpose of paying it by way of a gratification as a motive or reward for inducing a public servant.[1]

(2) Taking gratification for the exercise of personal influence with public servant. Punishment.—Simple imprisonment for one year or fine or both. (S. 163).

Thus, an Advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust,—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Sections 162 and 163 are almost identical. The only difference is that in section 162 the public servant is sought to be influenced by corrupt or illegal means, while in section 163 it is done by the exercise of personal influence.

(3) Falsely pretending to hold any particular office as a public servant, or falsely personating a public servant and in such assumed character doing, attempting to do, any act under colour of such office. Punishment.—Imprisonment of either description for two years or fine or both. (S. 170).

Section 170 requires two things : (*i*) A person (*a*) pretending to hold a particular office as a public servant, knowing that he does not hold such office, or (*b*) falsely personating any other person holding such office. (*ii*) Such person in such assumed character must do or attempt to do an act under colour of such office.

1. *Osimuddin Sarker v. State* (1961) 13 D. L. R. 197 : (1961) P. L. D. (Dac) 798.

Mere personation is not an offence under this section. The person personating must do or attempt to do some act under colour of the office of the public servant whom he personates.

(4) Wearing garb, or carrying any token, by a person, resembling that used by a certain class of public servants, with the intention that it may be believed or with knowledge that it is likely to be believed, that he belongs to that class of public servants. Punishment.—Imprisonment of either description for three years or a fine of Rs. 200 or both. (S. 171).

It is the intention that makes the disguise penal. Thus, wearing a Police uniform by a person for a dramatic representation is no offence, as the intention is not to make the audience believe that he is really a Police officer.

CHAPTER IXA

OF OFFENCES RELATING TO ELECTIONS

Chapter IXA was introduced in the Pakistan Penal Code by the Indian Elections Offences and Inquiries Act (XXXIX) of 1920. It seeks to make punishable under the ordinary Penal law, bribery, undue influence, and personation, and certain other malpractices at elections not only to the Legislative bodies, but also to members of public authorities where the law prescribes a method of election ; and, further, to debar persons guilty of malpractices from holding positions of public responsibility for a specific period.[1]

This Chapter contains 9 sections. It may be divided into two parts :

(1) Sections 171A to 171D define certain terms, whereas
(2) Sections 171E to 171-I penalise certain offences against elections.

1. Definitions : (a) **Election.**—The word 'election' is defined in Explanation 3 to section 21 of the Pakistan Penal Code. It denotes an election for the purpose of selecting members of any legislative, municipal or other public authority, of whatever character, the method of selection to which is by, or under, any law prescribed as by election.

(b) **'Candidate'** means a person who has been nominated as a candidate at any election and includes a person who, when an election is in contemplation, holds himself out as a prospective candidate threat ; provided that he is subsequently nominated as a candidate at such election. (S. 171A).

(c) **'Electoral right'** means the right of a person to stand, or not to stand as or to withdraw from being, a candidate or to vote or refrain from voting at an election. (S. 171A).

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1. Statement of Objects and Reasons, *Gazette of India*, 1920, Part V, p. 135, s. 4

(d) **Bribery at an election.**—(1) Whoever—

(*i*) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right ; or

(*ii*) accepts either for himself or for any other person any gratification as a reward for execrising any such right or for inducing or attempting to induce any other person to exercise any such right,

commits the offence of bribery :

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification, and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward. (S. 171B).

Section 171B defines the offence of bribery at an election. Bribery is defined primarily as the giving or acceptance of a gratification either as a motive or as a reward to any person, either to induce him to stand or not to stand as, or to withdraw from being, a candidate or to vote or refrain from voting at an election. It also includes offers or agreements to give or offer and attempts to procure a gratification for any person. 'Gratification' is already explained in section 161 of the Pakistan Penal Code and is not restricted to pecuniary gratifications or to gratifications estimated in money.[1]

(e) **Undue influence at elections.**—(1) Whoever voluntarily interferes or attempts to interfere with the free exercise of any electoral right commits the offence of undue influence at an election.

1. Statement of Objects and Reasons, *Gazette of India*, 1920, Part V, p. 135, s. 8.

(2) Without prejudice to the generality of the provisions of sub-section (1), whoever—

(*a*) threatens any candidate or voter, or any person in whom a candidate or voter is interested, with injury of any kind, or

(*b*) induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeasure or of spiritual censure,

shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter, within the meaning of sub-section (1).

(3) A declaration of public policy or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this section. (S. 171C).

Undue influence at an election is defined as the voluntary interference or attempted interference with the right of any person to stand, or not to stand as, or withdraw from being, a candidate, or to vote or refrain from voting. This covers all threats of injury to person or property and all illegal methods of person ation and any interference with the liberty of the candidates or the elect ors. The inducing or attempting to induce a person to believe that he will become the object of Divine displeasure is also interference. It is not, however, interference within the meaning of the clause to make a declaration of public policyor a promise of a public action.

Where an attempt or threat is proved, it is unnecessary to prove that any person was in fact prevented from voting because the offence is complete.

In the case of *Ram Saran Das v. Crown*,[1] on the night preceding the day of an election a candidate (complainant) was prevented from coming out of his house to canvass for votes, by his rival candidates and others (accused) who were picketing the complainant's house. It was held that on these facts the accused had not interfered or attempted to interfere with the free exercise of an electoral right

1. (1926) I. L. R. 7 Lahore 218.

or threatened any candidate or voter with injury ; and no *prima facie* case under section 171C of the Penal Code was made out.

In an Orissa case,[1] a candidate informed the voters that he was *Chalanti Vishnu* and representative of Lord Jagannath himself and that any person who did not vote for him would be a sinner against the Lord and the Hindu religion ; it was held that such propaganda would amount to an offence under section 171F read with this section.

(f) **Personation at elections.**—Whoever at an election applies for a voting paper or votes in the name of any other person, whether living or dead, or in a fictitious name. or who having voted once at such election applies at the same election for a voting paper in his own name, and whoever abets, procures or attempts to procure the voting by any person in any such way, commits the offence of personation at an election. (S. 171D).

This section covers a person who attempts to vote in another person's name or in a fictitious name, as well as a voter who attempts to vote twice and any person who abets, procures or attempts to procure, such voting. The accused must have been actuated by a corrupt motive.[2]

In the case of *Emperor v. Ramnath*,[3] the applicant was accused of having abetted the personation of a voter at a Municipal election in that, not being himself acquainted with the persons who came forward to vote, he had, on the advice of others, put his name to a "signature sheet" in token that the thumb mark made by the voter was that of a person entitled to vote under a certain name on the electoral roll. It was held that, inasmuch as the acts done by the applicant apparently constituted the specific offence provided for by section 171F, he could only be tried for that offence, and could not be tried for abetment of the general offence provided for by section 465 of the Code.

1. *Raj Raj Deb v. Gangadhar* (1964) A. I. R. Orissa 1.
2. *Pantam v. Venkayya* (1929) I. L. R. 53 Mad. 444.
3. (1924) I. L. R. 47 All. 268.

2. Offences against elections.—The following are deemed to be the offences against elections :—

(1) Giving or accepting gratification with the object of exercising any electoral right. (S. 171B). Gratification includes treating, *i. e.*, giving of food, drink, entertainment or provisions. (S. 171E). Punishment.—(*i*) In the case of bribery by treating—fine only. (*ii*) In other cases—Imprisonment of either description for one year or fine or both. (S. 171E).

(2) Interfering with the free exercise of any electoral right (cl. 1), threatening any candidate, voter, or any person in whom he is interested, with injury of any kind ; or induces any candidate or voter to believe that he or any person in whom he is interested will become an object of Divine displeasure or of spiritual censure. (S. 171C). Punishment.—Imprisonment of either description for one year or fine or both (S. 171F).

(3) Personation at elections. (S. 171D). Punishment.—Imprisonment of either description for one year or fine or both. (S. 171F).

(4) Publishing false statements in relation to the personal character or conduct of any candidate. (S. 171G). Punishment.—Fine only. (S. 171G).

(5) Illegal payments in connection with an election (S. 171H). Punishment.—A fine of Rs. 500. (S. 171H).

(6) Failure to keep election accounts. (S. 171-I). Punishment.—A fine of Rs. 500. (S. 171-I).

CHAPTER X

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

Chapter X contains penal provisions intented to enforce obedience to the lawful authority of public servants. Contempts of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police and other public servants are punishable under this Chapter.

This Chapter may be divided under the following groups :—

1. Wilful omission or evasion of the performance of a public duty (ss. 172-176 & 187).
2. Wilful refusal to do certain acts (ss. 178-180).
3. Giving false information to a public servant (ss.177,181,182).
4. Illegal purchase of or bid for property (s.185).
5. Obstructing or disobeying a public servant (ss.183-184, 186-188).
6. Threat of injury (ss. 189-190).

1. Wilful omission or evasion of the performance of a public duty.—There are six offences under this head which may be summarised as under :

(*a*) Absconding to avoid service of a summons, notice, or order or other proceeding from a public servant. (S. 172). Punishment.--(*i*) If the summons etc. is to attend in person or by an agent, or to produce a document in a Court of Justice--Simple imprisonment for six months or fine of Rs. 1000 or both. (*ii*) In other cases—Simple imprisonment for one month or fine of Rs.500 or both. (S. 172).

The contempt of authority arises by the conduct of the accused, *i. e.* by his absconding with the intention of avoiding service of summons etc. This implies that the accused knew that summons etc. had been issued and that he was trying to avoid its service by concealment. So knowledge that process was issued is essential to constitute an offence under this section.

The following are the points for proof :—(*i*) That the summons, notice or order was issued. (*ii*) That the public servant issuing it was legally competent to do so. (*iii*) That the accused knew or had reason to believe that such process was issued. (*iv*) That the accused absconded to avoid service of it.

(*b*) Intentionally preventing the service of summons, notice, or order, or intentionally preventing the lawful affixing of the same, or intentionally removing the same after it has been lawfully affixed, or intentionally preventing the lawful making of any proclamation. (S. 173). Punishment.— Same as under section 172. (S. 173).

As in section 172 the process must be issued by some public servant legally competent to do so and the prevention etc. must be intentional. If a public servant acts without jurisdiction, it is no offence to prevent the service of the process.

(*c*) Non-attendance, in obedience to a summons, notice, or order, or proclamation proceeding from a public servant, in person or by agent, or having attended, departing before it is lawful to depart. (S. 174). Punishment.—If the attendance is to be given— Simple imprisonment for six months or fine of Rs. 1000 or both. In other cases—Simple imprisonment for one month or fine of Rs. 500 or both. (S. 174).

Illustrations.—(*a*) A, being legally bound to appear before the High Court of East Pakistan in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b*) A, being legally bound to appear before a *Zila* Judge, as a witness, in obedience to a summons issued by that *Zila* Judge, intentionally omits to appear. A has committed the offence defined in this section.

The offence contemplated by this section is an intentional omission to appear—(*i*) at a particular specified place in Pakistan, (*ii*) at a particular time, and (*iii*) before a specified public functionary, (*iv*) in obedience to summons, notice or order (written or verbal), not defective in form, and (*v*) issued by an officer having jurisdiction in the matter.

A conviction cannot be had unless the person summoned (*i*) was legally bound to attend, and (*ii*) refused or intentionally omitted to attend.

If the public servant himself is absent on the date fixed, the person summoned cannot be convicted even if he purposely failed to attend. But where a man in obedience to a summons attended a Magistrate's Court at 10 a. m. but finding the Magistrate not present at the time mentioned in the summons, departed without waiting for a reasonable time, it was held[1] that he was guilty of an offence under section 174.

(*d*) Intentional omission to produce or deliver up any document to a public servant by a person legally bound to produce or deliver up such document. (S. 175). Punishment.—If a document is to be produced or delivered up to a Court of Justice—Simple imprisonment for six months or fine of Rs. 1000 or both. In other cases—Simple imprisonment for one month or fine of Rs. 500 or both. (S. 175).

Illustration.— A, being legally bound to produce a document before a *Zila* Court, intentionally omits to produce the same. A has committed the offence defined in this section.

(*e*) Intentionally omitting to give notice or to furnish information on any subject to any public servant in the manner and at the time required by law (when legally bound to give such notice or information). (S. 176). Punishment.—If the notice or information relates to the commission or the prevention of an offence or the apprehension of an offender—Simple imprisonment for six months or fine of Rs. 1000 or both. In other cases—Simple imprisonment for one month or fine of Rs. 500 or both. (S. 176).

Section 202 of the Pakistan Penal Code, though not appearing in this Chapter, deals with the offence of intentional omission to give information of an offence by a person bound to inform. The punishment under this section is imprisonment of either description for six months or fine or both.

(f) Intentionally omitting to give assistance to a public servant in the execution of his public duty (when bound by law to give assis-

1. *Queen Empress v. Kisan Bapu*, (1885) I. L. R. 10 Bom. 93.

tance). (S. 187). Punishment.—If assistance is demanded by a legally competent public servant for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody—Simple imprisonment for six months or fine of Rs. 500 or both. In other cases—Simple imprisonment for one month or fine of Rs. 200 or both. (S. 187).

The prosecution must prove— (*i*) that the accused was legally bound to assist, (*ii*) that he was called upon to render aid, (*iii*) that such demand was reasonable, (*iv*) that he intentionally omitted to assist, and (*v*) that the public servant was legally competent to call for aid.

2. **Wilful refusal to do certain acts.**—A person refusing to give true information to a public servant will be liable under the following circumstances :---

(*a*) Refusing an oath or affirmation to state the truth when required by a public servant legally competent to require it. (S. 178) Punishment.—Simple imprisonment for six months or fine of Rs. 1000 or both. (S. 178).

The evidence of a witness cannot be taken unless he binds himself by an oath or solemn affirmation to state the truth. The refusal to take oath is a contempt of the Court and the witness may at once be dealt with under section 480 of the Criminal Procedure Code. If, however, the Court considers that a more severe punishment should be inflicted, sanction for the prosecution of the witness should be given according to the provision of section 195 of the Criminal Procedure Code.

(*b*) Refusing, by a person legally bound to state the truth, to answer any question put to him by a public servant in the exercise of his legal powers. (S. 179). Punishment.—Same as under section 178. (S. 179).

A person giving evidence on oath is bound to state the truth. If he refuses to answer he is liable under section 179, unless he is otherwise protected under sections 121-131 of the Evidence

Act, on the ground of privilege. If he gives false answers, he is liable under section 193 of the Penal Code.

(*c*) Refusing to sign a statement (made by the accused himself), when required to sign that statement by a public servant legally competent to require that he shall sign it. (S. 180). Punishment.—Simple imprisonment for 3 months or fine of Rs. 500 or both. (S. 180).

3. Giving false information to a public servant.—A person giving false information to a public servant is liable in the following cases :—

(*a*) Furnishing false information to a public servant by one legally bound to give information. (S. 177). Punishment.—If the information relates to the commission or the prevention of an offence or the apprehension of an offender--Imprisonment of either description for 2 years or fine or both. In other cases—Simple imprisonment for six months or fine of Rs. 1000 or both. (S. 177).

There are 2 parts in this section : (1) Information on any subject, (2) information (a) about an offence committed ; (b) for preventing an offence not yet committed ; (c) and for arresting an offender.

Illustrations.—(*a*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under clause 5, section VII, Regulation III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest police station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Points of proof for this offence are—(*i*) that the accused was legally bound to furnish information, (*ii*) that information was to be given to a public servant, (*iii*) that the accused would furnish certain information being so bound, (*iv*) that the information given was false, (*v*) that the accused furnished it as true though he knew or had reason to believe that it was false. For the second part of this section it is also required to prove (*vi*) that such information was with respect to the commission or prevention of an offence or the apprehension of an offender.

(*b*) False statement on oath to a public servant or other person authorised to administer oath, by a person legally bound to state the truth on the subject in question. Punishment.—Imprisonment of either description for 3 years and fine. (S. 181).

This section refers to cases in which the false statement on oath is made to any public servant in proceedings other than judicial. For false statement in judicial proceedings see section 191.

(*c*) Giving false information to any public servant, knowing or believing it to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant—(*i*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or (*ii*) to use the lawful power of such public servant to the injury or annoyance of any person. (S. 182). Punishment.—Imprisonment of either description for six months or fine of Rs. 1000 or both. (S. 182).

Illustrations.— (*a*) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section .

(*b*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(*c*) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assailants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villagers or some of them. A has committed an offence under this section.

If the accused is charged under section 182, the prosecution must prove— (*a*) that the person to whom the information was given was a public servant ; (*b*) that the accused gave the information to that public servant ; (*c*) that such information was false ; (*d*) that the accused knew or believed such information to be false[1] when giving it ; and (*e*) that the accused intended thereby to cause, or knew that it was likely that he would thereby cause, such public servant to do or omit anything which such public servant ought not to do or omit if the true state of facts were known to him ; or that he intended thereby to cause or knew that it was likely that he would thereby cause such public servant to use his lawful powers to the injury or annoyance of any person.

There is a difference between section 182 and section 177. The difference is that in section 182 the false information is given with a particular intent. No person can be prosecuted under section 177 unless he is legally bound to give the information. No such restriction is imposed in section 182.

Section 203 though not appearing in this Chapter deals with the offence of giving false information respecting an offence committed. Under this section the punishment is imprisonment of either description for 2 years or fine or both.

4. Illegal purchase of or bid for property.—This offence is stated in section 185 of the Pakistan Penal Code. It states : "Whoever, at any sale of property held by the lawful authority of a public servant, as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that

1. *Nurul Kabir v. Administrator of Wakf* (1967) 19 D.L.R. 460.

property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both."

5. Obstructing or disobeying a public servant.—The following provisions deal with obstructing or disobeying a public servant :-

(*a*) Offering resistance to the taking of any property by the lawful authority of a public servant (knowing or having reason to believe that he is a public servant). (S. 183). Punishment.—Imprisonment of either description for six months or fine of Rs. 1000 or both, (S. 183).

'Resistance' means active physical obstruction. A mere refusal to deliver up property or threat of obstruction does not amount to 'resistance' under section 183. Thus if a man threatens to do harm to a Police Officer on his attempt to carry out some legal orders, the offence does not come under section 183, though it may fall under section 186.

Section 183 speaks of taking of property by 'lawful authority'. There is a difference of opinion on this point. The Bombay High Court is of opinion that the section applies to resistance to the taking of property by lawful authority of a public servant, and that there are no words in the section, as there are in section 99, extending the operation of the section to acts which are not strictly justifiable by law. Resistance to an act of a public officer acting *bona fide* though in excess of his authority may give rise to some charge in the nature of assault, but it cannot afford any foundation for a prosecution under this section.[1] The Madras High Court is of opinion that this section should be read in conjunction with section 99. Taking the two together, if an officer acts in good faith under colour of his office, the mere circumstance that his act may not be strictly justifiable by law cannot affect the lawfulness of his authority.[2]

1. *Sakharam v. Emperor* (1935). 37 Bom. L.R. 362 : A.I.R. 1935. Bom. 233.
2. *Queen Empress v. Tiruchittambala* (1896) I. L. R. 21 Mad. 78. at 81.

(*b*) Intentionally obstructing any sale of property offered for sale by the lawful authority of a public servant. Punishment.—Imprisonment of either description for one month or fine of Rs. 500 or both. (S.184).

The obstruction may be by direct or indirect means, The direct method would be to apply physical force. The indirect method may be such as to create a false alarm for which intending purchasers hesitate to bid for the property.

(*c*) Voluntarily obstructing a public servant in the discharge of his public functions. Punishment.—Imprisonment of either description for 3 months or fine of Rs. 500 or both. (S. 186).

'Obstruction' means active opposition such as by the use of physical force[1] or by threats or menaces. A mere passive resistance, *i.e.* by objection or refusal without threat or violence, etc., does not amount to obstruction.

To constitute an offence under this section it must be proved--(*i*) that the obstruction was given to a public servant, (*ii*) voluntarily, (*iii*) while engaged in doing a legal duty.

In the case of *Emperor v. Bhaga Mana*[2] a Circle Inspector entered into the compound of the accused with a village servant to remove a portion of the hedge which was an encroachment. When the servant put his scythe to the hedge to cut it, the accused caught hold of the scythe and threatened him. It was held that the accused was guilty of an offence under this section, since his laying hold of the scythe amounted to physical obstruction, and the obstruction offered to the servant was tantamount to obstruction to the Circle Inspector under whose orders he was acting. Similarly, in the case of *Emperor v. Suleman*[3] the accused, a licensed motor driver, in order to evade payment of toll, drove a motor bus for six days on a side track before reaching the toll bar, and after driving on that side track for about 3 furlongs again took the main road. There was a

1. *State v. Fazar Ali*, (1957) 9 D. L.R. 77.
2. (1927) 30 Bom. L. R. 364.
3. (1924) 36 Bom. L. R. 1124 : A.I.R. 1935 Bom. 24.

checking bar further up the road, but the accused did not stop the bus there to pay the toll although he was signalled to do so. It was held that as the accused prevented the toll collector's servant from collecting the dues under the provisions of the Tolls on Roads and Bridges Act 1875, the accused was guilty of obstructing him in the discharge of his duty. But where the obstruction is caused to acts which are not in due discharge of public functions, no offence is committed.[1]

(*d*) Intentional omission to assist a public servant in the execution of his duty when bound by law to give assistance. (S. 187). Punishment.—Simple imprisonment for 1 month or fine of Rs. 200 or both. If such assistance be demanded by public servant legally competent for the purpose of executing any process issued by a Court of Justice etc.—Simple imprisonment for six months or fine of Rs. 500 or both. (S. 187).

(*e*) Knowingly disobeying an order promulgated by a legally empowered public servant directing to abstain from a certain act or to take order with certain property in possession or under management. (S. 188). Punishment.—(*i*) If such disobedience causes or tends to cause obstruction, annoyance or injury or risk of obstructio, or annoyance, or injury, to any person lawfully employed—Simple imprisonment for one month or fine of Rs. 200 or both. (*ii*) If such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray—Imprisonment of either description for six months or fine of Rs. 1000 or both. (S. 188).

Illustration.— An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

To constitute an offence under this section the prosecution must show (*i*) that there was an order promulgated ; (*ii*) that it was promulgated by a public servant ; (*iii*) that such public servant was

1. *State v. Sushil Chandra Basu*, (1956) 8 D. L. R. 452.

lawfully empowered to promulgate the same ; (*iv*) that such order directed the accused to abstain from a certain act or to take certain order, etc. and (*v*) that the accused knew of such direction to him.[1]

6. Threat of injury.— (*a*) Section 189 of the Pakistan Penal Code deals with the offence of threat of injury to a public servant. It states : "Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In the case of *Emperor v. Yar Muhammad*,[2] two Constables went at night to the house of a suspect, kept under surveillance, and called out his name from the public road, and his brother who lived in an adjoining hut came out and threatened to assault the Constables for the annoyance caused, it was held that he was guilty of an offence under this section.

(*b*) Section 190 deals with the offence of threat of injury to a person to prevent him from seeking legal remedy. It states : "Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. In the case of *Paul De Cruz*,[3] a Clergyman, knowing that a Civil suit was pending against a person for the possession of certain church property, ex-communicated him for withholding it, it was held that the clergyman had committed no offence under this section.

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1. *Azhar Khan v. State* (1960) 12 D.L.R. 838 : 1961 P.L.D. (Dac) 484 ; See also *Crown v. Muhammad Ali* (1954) 6.D.L.R.396.
2. (1930) I. L. R. 58 Cal. 392.
3. (1884) I. L. R. 8 Mad. 140.

CHAPTER XI

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Chapter XI deals with offences against public justice including the offences of giving and fabricating false evidence. The offences dealt with in this Chapter may be grouped as follows :--

1. False evidence. (ss. 191-200).
2. Causing disappearance of evidence, giving false information and destruction of documentary evidence. (ss. 201-204).
3. False personations. (ss. 140, 170-171, 205, 229 & 416).
4. Abuse of process of Court. (ss. 206-210).
5. False charge of an offence. (s. 211).
6. Screening of offenders. (ss 201, 213-215).
7. Harbouring of offenders. (ss. 52A, 212 and 216-216A).
8. Offences against justice by public servants. (ss. 217-223 & 225A).
9. Resisting the law or attempting to escape from custody (ss. 224, 225 and 225B).
10. Transgression of punishment. (ss. 226 & 227).
11. Contempt of Court. (s. 228).

1. False Evidence.— The following offences fall under this head :—

(*a*) Giving false evidence. (s. 191).
(*b*) Fabricating false evidence. (s. 192).
(*c*) Aggravated forms of giving or fabricating false evidence (ss. 194 & 195).
(*d*) Offences punishable in the same way as giving or fabricating false evidence. (ss. 196-200).

(a) Giving false evidence.— Section 191 lays down that whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or

does not believe to be true, is said to give false evidence. Punishment.—If the false evidence is given in any stage of a judicial proceeding—Imprisonment of either description for 7 years and fine. In any other case (*i. e.* in a non-judicial proceeding —Imprisonment of either description for 3 years and fine. (S. 193).

A few illustrations will make the point clear : (*a*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z ; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document, which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

The ingredients of the offence of giving false evidence are :

(1) A person must be legally bound (*i*) by an oath, or by any express provision of law, to state the truth, or (*ii*) to make a declaration upon any subject ;

(2) he must make a false statement ;

(3) he must (*i*) know or believe it to be false, or (*ii*) not believe it to be true.

The offence of giving false evidence is termed perjury in English law. The English law differs from Pakistan law in respect of giving false evidence in the following respects :--

(1) In English law, the false statement must have reference to some judicial proceedings, and the false evidence must be given before a competent tribunal. In the Pakistan Penal Code this distinction only exists in reference to the decree of punishment imposed.

(2) In English law perjury must be proved by two witnesses, or by one witness with proof of other material and relevant facts, confirming his testimony. Under the Penal Code no particular number of witnesses is required to prove any fact.

(3) In English law the matter sworn to must be material to the case pending in the Court. According to the Penal Code it is not necessary that the statement should be material, but that would be considered in awarding punishment.

(4) In English law an oath, or an affirmation, rendered equivalent to it by law, is an essential element of the offence. It is immaterial whether the fact which is sworn to be is in itself true or false. In Pakistan an oath is merely one of the forms to bind a party to speak the truth. Even if an oath is improperly administered by an incompetent person, the offence would be committed if the party giving the false statement were bound by an express provision of law to state the truth.

(b) Fabricating false evidence.—Section 192 lays down that whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence." Punishment.—If any person fabricates

false evidence in any stage of judicial proceeding—Imprisonment of either description for 7 years and fine. In any other case (*i. e*, in a non-judicial proceeding)—Imprisonment of either description for 3 years and fine. (S. 193).

Illustrations.— (*a*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Ingredients.— The points, which must be proved for convicting an accused on a charge of fabricating false evidence are :

(1) That the accused caused a certain circumstance to exist or made a false entry in a book or record, or made a document containing a false statement.

(2) That he did one of the above acts with the intention that it might appear in evidence in a judicial proceeding or in a proceeding taken by law before a public servant, or an arbitrator.

(3) That a person conducting the proceeding had to form an opinion upon the evidence.

(4) That the accused did one of the acts mentioned in (1) above with the intention that it might cause the person conducting the proceeding to entertain an erroneous opinion.

(5) That such erroneous opinion touched a point material to the result of the proceeding.

Under section 192 the offence of fabricating false evidence is complete as soon as the fabrication is made intending that

it may be used as evidence in a judicial proceeding. It is immaterial that the judicial proceeding had not been commenced or that no actual use has been made of the evidence fabricated.[1]

Distinction between giving false evidence and fabricating false evidence.—(1) It is the intentional giving of false evidence or the intentional fabrication of false evidence that is punishable. Law will not punish a witness, who, through ignorance or mistake, or through carelessness or inadvertence, makes foolishly a false statement. The intention forms the essence of both the offences. But there is a difference between the two as regards the kind of intention. In the case of giving false evidedce, only general intention is sufficient. It is sufficient if the false evidence is intentionally given. But in the case of fabricating false evidence particular intention is the essential point to be considered. The offence cannot be committed unless the accused fabricates evidence with a particular intention, *viz.*, to use a false circumstance, entry or document in evidence in a proceeding and to procure the formation of a wrong view on a material point.

(2) The offence of giving false evidence is committed by a person who is bound by an oath or by an express provision of law to state the truth or to make a declaration upon any subject. In the case of fabricating a false evidence this ingredient is not necessary.

(3) In the case of giving false evidence, the false statement need not be made on a material point. The offence is complete if any false statement is made. But in the case of fabricating false evidence, the evidence fabricated must be on a material point, otherwise the offence cannot be committed.

(4) The question of the effect of the evidence on the officer before whom the evidence is given is of no consequence in the case of giving false evidence, but this is the important point to be considered in the case of fabricating false evidence.

(5) It is essential that there should be a proceeding, judicial or non-judicial, being conducted at the time of giving false evidence.

1. *Jnanendra Nath v. Mokbul Hossain* (1959) 11 D. L. R. 359 : 1960 P. L. D. (Dacca) 19.

It is not essential that there should be such a proceeding being conducted or pending at the time of fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the evidence fabricated is intended to be used in such a proceeding.

(c) Aggravated forms of giving or fabricating false evidence.—The aggravated forms of giving or fabricating false evidence are :

(1) Giving or fabricating false evidence, intending thereby to cause (or knowing it to be likely that it will cause) some person to be convicted of a capital sentence. (S. 194). Punishment.—(*i*) If innocent person be convicted and executed in consequence of such false evidence—Death or transportation for life or rigorous imprisonment for 10 years and fine. (*ii*) In other cases—Transportation for life or rigorous imprisonment for 10 years and fine. (S. 194).

(2) Giving or fabricating false evidence, intending thereby to cause (or knowing it to be likely that it will cause) some person to be convicted of an offence punishable with transportation for life, or imprisonment for 7 years, or more. (S. 195). Punishment.—Same as for the offence charged. (S. 195).

(d) Offences punishable in the same way as giving or fabricating false evidence.—The following five offences are punishable in the same manner as giving false evidence :—

(1) Using as genuine evidence known to be false or fabricated. (S. 196).

(2) Issuing or signing any certificate required by law to be given or signed or by law made evidence of any fact knowing or believing that such certificate is false in any material point. (S. 197).

(3) Using as true a certificate known to be false in any material point. (S. 198).

(4) False statement made in any declaration which touches any material point and which is by law receivable as evidence. (S.199).

(5) Using as true any such declaration known to be false in any material point. (S. 200).

2. Causing disappearance of evidence, giving false information and destruction of documentary evidence.---The offences under this head are described in sections 201 to 204. Causing disappearance of evidence is a very common offence, specially in case of women giving birth to illegitimate children. The offence is punishable under section 201 of the Pakistan Penal Code.

(1) Under section 201, if a person with the intention of screening the offender from legal punishment (a) causes disappearance of evidence of an offence, or (b) gives any information which he knows or believes to be false, he shall be punished.

Punishment.—(i) In the case of an offence punishable with death—Imprisonment of either description for 7 years and fine. (ii) In the case of an offence punishable with transportation for life or imprisonment for 10 years—Imprisonment of either description for 3 years and fine. (iii) In the case of an offence punishable with imprisonment for less than 10 years— 1/4th of the longest term of imprisonment provided for the offence or fine or both. (S. 201).

Illustration.—A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Ingredients of section 201.—The points which are required to be proved are that : (1) An offence has been committed.

(2) The accused has caused any evidence of the commission of the offence to disappear or has given any information respecting the offence which he then knew or believed to be false.

(3) The accused knew or had reason to believe, that such offence had been committed.

(4) The accused did as mentioned in (2) above with the intention of screening the offender from legal punishment.

If the offence in respect of which the accused is alleged to have committed the offence under section 201 is punishable with death, transportation for life or with imprisonment extending to 10 years, it will be an additional ingredient to prove the aggravating circumstance.

In the case of *Public Prosecutor v. Munisami*,[1] the accused took from a murderer a jewel which was the property of the deceased. He hid it and produced it later. It was held that the accused had a clear intention of screening the offender from punishment and so was guilty under section 201.

(2) Intentional omission to give information of offence by person bound to inform. Punishment.—Imprisonment of either description for six months or fine or both. (S. 202).

(3) Giving false information respecting an offence already committed. Punishment.—Imprisonment of either descirption for 2 years or fine or both. (S. 203).

(4) Destruction or secretion or obliteration of a document to prevent its production in evidence in a Court is punishable. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 204).

3. False Personations.—There are seven sections scattered here and there, which deal with false personations :

(1) Personation of a soldier, sailor or airman. Punishment.—Imprisonment of either description for 3 months or fine of Rs. 500 or both. (S. 140).

(2) Personation of a public servant. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 170).

(3) Wearing garb and carrying the token used by a public servant. Punishment.—Imprisonment of either description for 3 months or fine of Rs. 200 or both. (S. 171).

(4) Personation at an election. (S. 171D). Punishment.—Imprisonment of either description for one year or fine or both. (S. 171F).

(5) Personation for the purpose of an act or proceeding in a suit or prosecution. Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 205).

Thus A, a witness, falsely deposes on oath in another's name in a Court of Law. A is guilty of an offence under section 205.

The offence punishable under this section is not merely cheating by using a fictitious name, but by falsely assuming

1. (1940) I. L. R. (1941) Mad. 503.

to become other real person and in that character making an admissible statement, confessing judgment, or causing any process to be issued etc.

Any fraudulent gain or benefit to the offender is not an essential element of this offence. Where A personated B at a trial with B's consent, which was given to save himself from the trouble of making an appearance in person before a Magistrate, it was held[1] that A was guilty of an offence under this section and B was guilty of abetment of the offence.

(6) Personation of a juror or assessor. Punishment.—Imprisonment for 2 years or fine or both. (S. 229).

(7) Cheating by personation. (S. 416). Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 419).

4. **Abuse of Process of Court.**—Sections 206 to 210 deal with collusive legal proceedings instituted for the purpose of defeating creditors. The provisions of these sections may be arranged in the following manner :—

(1) Fraudulent claim to, or removal, or concealment of property to prevent its seizure as a forfeiture or in execution of a decree. (Ss.206-207). Punishment.—Imprisonment of either description for 2 years or fine or both. (Ss. 206 and 207).

(2) Fraudulently suffering a decree for a sum not due. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 208).

(3) Fraudulently or dishonestly making a false claim in Court. Punishment.—Imprisonment of either description for 2 years and fine. (S. 209).

(4) Fraudulently obtaining a decree for a sum not due or causing a decree or order to be executed against any person after it has been satisfied. Punishment.—Imprisonment of either description for 2 years and fine or both. (S. 210).

5. **False charge of an offence.**—The fifth kind of offence against public justice is that of making a false criminal charge against an innocent person with dishonest intent. This is

1. *Suppakon* (1863) 3 M. H. C. 450.

discussed in section 211 of the Pakistan Penal Code. It provides that whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for 7 years or upwards, shall be punishable with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

There are three ingredients which the prosecution has to prove before it can succeed in bringing a charge under section 211 against any accused : (1) intention to cause injury to any person ; (2) institution or causing of institution of a criminal proceeding or false charge with respect to the commission of an offence ; (3) knowledge that there is no just or lawful ground for such proceeding or charge. All the above ingredients and especially the last ingredient must be proved positively by the prosecution in order to sustain the charge or conviction.

Distinction between making a false charge and institution of false criminal proceedings.—Criminal law may be put in motion by giving information to the police or lodging a complaint before a Magistrate. A false charge to the police relating to a cognizable offence amounts to institution of criminal proceedings. But in the case of non-cognizable offences since the police has no power to make any proceedings without orders from a Magistrate, a false charge of non-cognizable offences made to the police is not an institution of criminal proceeding but merely a false charge. There is, however, no distinction between the two when a false charge of any offence is made before a Magistrate.

Section 211 deals with "making of false charge" and "institution of false criminal proceedings" as two distinct offences. It provides for (i) actually instituting or causing to be instituted

false criminal proceedings against a person ; and (ii) preferring a false charge against a person. The first embraces within itself the second. A false charge may be preferred against a person but no criminal proceedings may follow. But in the case of false criminal proceedings they are only possible when a false charge either to police or to a Magistrate has been preferred.

Distinction between false charge and false information.—There is a clear distinction between a false charge under section 211 and a false information given to the police under section 182.

(1) A person prosecuting another under section 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information, but in an inquiry under section 211, proof of the absence of just and lawful ground for making the charge is an important element.

(2) Under section 182 false information is given to a public servant with intent to cause him to do or omit anything which ought not to be done or omitted or to use the lawful power of such public servant to the injury or annoyance of any person ; under section 211 criminal proceedings are initiated or false charge is laid with a view to cause injury to the person informed against.

(3) In order to make the offence complete under section 182 it is not necessary that the public servant should have acted upon the false information, as the offence is complete as soon as the information is given. But for institution of criminal proceedings the criminal law must be set in motion before the offence is complete, *i.e.*, proceedings are instituted and commenced.

(4) Under section 182 the false information given should be to the knowledge or belief of the informant ; but under section 211 the informant should only make his complaint without any just grounds or without due care and caution.

6. Screening of Offenders.—There are four offences under this head. They are :

(1) Causing disappearance of evidence of an offence or giving false information to screen the offender. Punishment.—If the offence is punishable with death—Imprisonment of either description for 7 years and fine. (S. 201).

(2) Taking gift to screen an offender from punishment. Punishment.—(i) If the offence is punishable with death—Imprisonment of either description for 7 years and fine. (ii) In case of offence punishable with transportation for life or with imprisonment for 10 years—Imprisonment of either description for 3 years and fine. (iii) In case of an offence punishable with imprisonment for not less than 10 years—Imprisonment for 1/4th of the maximum imprisonment provided for the offence or fine or both. (S. 213).

(3) Offering or causing to offer or agreeing to offer any gratification or restoring any property in consideration of screening an offender. Punishment.—Same as under section 213. (S. 214).

(4) Taking any gratification on account of helping any person to recover any moveable property of which he has been deprived by any offence under this Code is punished unless the person taking gift uses all means in his power to cause the offender to be apprehended and convicted. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 215).

In the case of *Emperor v. Hargayan*,[1] the complainant's buffaloes were stolen. The accused proposed to the complainant that if the complainant gave Rs. 200 and promised to take no steps to prosecute the thieves he would procure the restoration of the stolen cattle. The complainant did not agree to this proposal and reported the matter to the Police. It was held that the accused was guilty of an attempt to commit the offence specified in section 215.

7. **Harbouring of Offenders.**—The word 'harbour' includes the supplying a person with shelter, food, drink, money, clothes, arms, ammunition, or means of conveyance, or the assisting a person in any way to evade apprehension. (S. 52A).

The offences under the head of 'harbouring offenders' are :

(1) Harbouring or concealing a person knowing him to be an offender with the intention of screening him from legal punishment. Punishment.—(i) If the offence is punishable with death—Imprisonment of either description for 5 years and fine.

1. (1922) I.L. R. 45 All. 159.

(ii) If the offence is punishable with transportation for life or imprisonment for 10 years—Imprisonment of either description for 3 years and fine. (iii) If the offence is punishable with imprisonment for one year—Imprisonment for 1/4th part of the maximum imprisonment provided for the offence or fine or both. (S. 212).

(2) Harbouring or concealing an offender who has escaped from custody or whose apprehension has been ordered. Punishment.--(i) If the offence is punishable with death—Imprisonment of either description for 7 years and fine. (ii) If the offence is punishable with transportation for life or imprisonment for 10 years—Imprisonment of either description for 3 years, with or without fine. (iii) If the offence is punishable with imprisonment for one year—Imprisonment of either description for 1/4th part of the maximum imprisonment provided for the offence or fine or both. (S. 216).

(3) Knowingly harbouring any persons who are about to commit, or have committed robbery or dacoity, Punishment.—Rigorous imprisonment for 7 years and fine. (S. 216A).

The above sections do not extend to the case in which the harbour is by the husband or wife of the offender. (S. 52A).

Sections 212, 216 and 216A deal with harbouring offenders. Harbouring offenders is as much penalised as screening offenders. Screening an offender means merely to hide him, whereas harbouring means not only hiding him but giving him continued protection, food etc., as a matter of fact a kind of encouragement to the offender. Exception is made only in the case of a husband or wife. If a husband commits an offence, the wife is allowed to harbour him and *vice versa*. Neither can be prosecuted for the offence of harbouring offender.

8. Offences against justice by public servants.—The following are the provisions relating to the offences against public justice committed by public servants :—

(1) Public servant, knowingly disobeying a direction of law with intent to save any person from punishment or any property from forfeiture. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 217).

(2) Public servant, charged, as such public servant, with the preparation of any record or other writing, framing it incorrectly with intent to cause loss or injury to the public or to any person or to save any person from legal punishment or any property from forfeiture. Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 218).

(3) Public servant, in any stage of judicial proceeding, corruptly or maliciously making or pronouncing any report, order, verdict, or decision, knowing that it is contrary to law. Punishment.—Imprisonment of either description for 7 years or fine or both. (S, 219).

(4) Public servant, corruptly or maliciously committing any person for trial, or keeping any person in confinement knowing that he is acting contrary to law. Punishment.—Same as under section 219. (S. 220).

(5) Public servant, intentionally omitting to apprehend, or suffering to escape, any person when legally bound to apprehend or keep in confinement. Punishment.—(i) If such person is charged with, or liable to apprehension for, an offence punishable with death—Imprisonment of either description for 7 years with or without fine. (ii) If the offence is punishable with transportation for life or imprisonment for 10 years—Imprisonment for 3 years, with or without fine. (iii) If the offence is punishable with imprisonment for less than 10 years—Imprisonment of either description for 2 years, with or without fine. (S. 221).

(6) Public servant, intentionally omitting to apprehend, or suffering to escape, any person when such person is under a sentence or lawfully committed to custody. Punishment.—(i) If such person is under a sentence of death—Transportation for life or imprisonment of either description for 14 years, with or without fine. (ii) If the person is subject to transportation for life or transportation or imprisonment for 10 years or more—Imprisonment of either description for 7 years, with or without fine. (iii) If the person is subject to imprisonment for less than 10 years or if he was lawfully committed to custody—Imprisonment of either description for 3 years, with or without fine. (S. 222).

(7) Public servant, legally bound as such to keep in confinement any person charged with, or convicted of, an offence, or lawfully committed to custody, negligently suffering him to escape from confinement. Punishment.—Simple imprisonment for 2 years or fine or both. (S. 223).

(8) Public servant, omitting to apprehend or suffering to escape from confinement, any person in cases not otherwise provided for. Punishment.—If he does so intentionally—Imprisonment of either description for 3 years or fine or both. If he does so negligently —Simple imprisonment for 2 years or fine or both. (S. 225A).

9. Resisting the law or attempting to escape from custody.— The provisions relating to this offence are contained in sections 224, 225 and 225B.

Section 224 lays down that whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Section 224 deals with two kinds of offences—(i) Internal resistance or illegal obstruction by a person to his lawful apprehension for any offence with which he is charged. (ii) Escape or attempt to escape by a person from lawful custody for the offence with which he is charged or of which he has been convicted.

Section 225 deals with resistance or obstruction to lawful apprehension of another person. Punishment.— (i) If the offender be under a sentence of death—Transportation for life or imprisonment for 10 years and fine. (ii) If the offender is sentenced to transportation for life or transportation, or imprisonment for 10 years or more—Imprisonment for 7 years and fine. (iii) If the offender is charged with a capital offence—Imprisonment for 7

years and fine. (iv) If he is charged with an offence punishable with transportation for life or imprisonment up to 10 years—Imprisonment for 3 years and fine. (v) In all other cases—Imprisonment for 2 years or fine or both. (S. 225).

Section 225B deals with resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for. Punishment.—Imprisonment of either description for 6 months or fine or both. (S. 225 B).

10. Transgression of punishment.—The offence of this class may be grouped under two heads :

(1) Unlawful return from transportation.

(2) Intentional breach of conditional remission.

(1) Unlawful return from transportation.—Section 226 of the Pakistan Penal Code applies if a person, who is sentenced to transportation, returns from the penal settlement before expiry or remission of the term of transportation. It does not extend to deportation which is different from transportation, though a deported man may be transported. The punishment is rigorous imprisonment for 3 years and fine followed by transportation for life.

(2) Intentional breach of conditional remission.—Section 227 of the Pakistan Penal Code deals with the offence of intentional breach of conditional remission. Under section 401 of the Criminal Procedure Code the Provincial Government is empowered to suspend or remit sentence of a convicted prisoner. If a person knowing the condition on which his sentence is remitted (not suspended) violates it, he will come within the purview of the section. Punishment is the original punishment or so much of it as has not been undergone.

11. Contempt of Court.—Section 228 of the Pakistan Penal Code deals with Contempt of Court. It provides that "whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to 6 months, or with fine which may extend to Rs. 1000, or with both."

The essential ingredients of the offence of contempt of Court are :

(1) offering any insult or causing any interruption ;
(2) the insult or interruption must be of a public servant ;
(3) such insult or interruption must be intentional ;
(4) the insult or interruption must be offered or caused while the public servant is sitting in any stage of a judicial proceeding.

In the case of *Emperor v. Venkatrao*,[1] the accused who was tried for rioting and other offences, when asked to make a statement under section 342 of the Criminal Procedure Code, called the Session Judge, "a prejudiced Judge." Thereafter the Court rose for the mid-day recess. After the recess he was asked to withdraw the statement, but he declined to do so. Here, the accused has committed an offence under section 228 of the Penal Code.

Section 228 is thus confined to those cases of contempt of Court where the public servant is sittting in any stage of judicial proceeding. But the Court has inherent jurisdiction to punish contempts of Court not coming within the purview of the section. Thus, where a process-server was insulted in most filthy language, caught by his throat and severely pushed out of the room while effecting service of a notice, it was held[2] that it was a contempt of Court, as it was an attempt to obstruct or unduly interfere with the administration of justice.

The Penal Code does not, however, provide against a contempt of Court committed by the publication of a libel out of Court, when the Court is not sitting ; and neither in Chapter XXI (of Defamation) nor elsewhere does it provide for the punishment of a contempt of Court committed by the publication of a libel reflecting upon a Judge in his judicial capacity, or in reference to his conduct in the discharge of his public duties.[3] The High Court, however, has power to punish such contempts of Courts.[4]

1. (1922) 24 Bom. L.R. 386.
2. *A. H. Skone v. M. Bason* (1925) 29 C.W.N. 766.
3. *Surendra v. Chief Justice* (1883) I.L.R. 10 Cal. 109, 129 P.C.
4. *Ibid.*

CHAPTER XII

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS

The offences described in Chapter XII relate to—

1. Coins and
2. Government stamps.

1. Coins.—Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

Pakistan coin is metal stamped and issued by the authority of the Government of Pakistan in order to be used as money. (S. 230).

The following are the ingredients of coin :—

(1) Coin must be metal. So cowries are not coin.

(2) It must be used as money. Thus medals are not coin, because they are not intended to be used as money.

(3) It must be stamped. Thus lumps of unstamped gold, though used as money, are not coin.

(4) It must be used by the authority of some State or Sovereign Power. Thus coins struck in Russia, France, Germany are all coins.

(5) The issue of such coin must be for the purpose of being used as money.

(6) It must be current, *i.e.* used for the time being as money. Thus old and obsolete coins out of circulation are not coins.

Offences relating to coins.—The offences relating to coins may be classified into three divisions :

(1) Counterfeiting.
(2) Acts of mint employees.
(3) Alteration of coins.

(1) Counterfeiting.—(1) Counterfeiting coin or Pakistan coin. Punishment.—In the case of Pakistan coin—Transportation

for life, or imprisonment of either description for 10 years and fine. In the case of other coins—Imprisonment of either description for 7 years and fine. (Ss. 231 & 232).

A person commits this offence who intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin. (Explanation to s. 231).

(2) Making, mending, buying, selling, or disposing of any die or instrument for counterfeiting coin or Pakistan coin. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 7 years and fine. In the case of other coins—Imprisonment of either description for 3 years, and fine. (Ss. 233 & 234).

(3) Being in possession of any instrument or material for the purpose of using the same for counterfeiting coin or Pakistan coin. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 10 years and fine. In the case of other coins—Imprisonment of either description for 3 years and fine. (S.235).

(4) Abetting, in Pakistan, the counterfeiting of coin out of Pakistan. Punishment.—Same as for abetting the counterfeiting of coin within Pakistan. (S. 236).

(5) Importing to, or exporting from Pakistan any counterfeit coin or Pakistan coin, knowing or having reason to believe that it is counterfeit. Punishment.—In the case of Pakistan coin—Transportation for life, or imprisonment of either description for 10 years and fine. In the case of other coins—Imprisonment of either description for 3 years and fine. (Ss. 237&238).

(6) Delivery to another of a coin or Pakistan coin possessed with knowledge that it is counterfeit. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 10 years and fine. In the case of other coins—Imprisonment of either description for 5 years and fine. (Ss. 239 & 240).

(7) Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit. Punishment.—Imprisonment of either description for 2 years or fine up to ten times the value of the counterfeit coin or both. (S. 241).

(8) Possession of a counterfeit coin or Pakistan coin by a person who knew it to be counterfeit when he became possessed thereof. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 7 years and fine. In the case of other coins—Imprisonment of either description for 3 years and fine. (Ss. 242 & 243).

(2) **Acts of mint employees.**—(1) Any person employed in a mint causing a coin to be of a different weight or composition from that fixed by law. Punishment.—Imprisonment of either description for 7 years and fine. (S. 244).

(2) Unlawfully taking from a mint any coining instrument or tool. Punishment.—Same as under section 244. (S. 245).

(3) **Alteration of coins.**—(1) Fraudulently or dishonestly diminishing the weight or altering the composition of any coin or Pakistan coin. Punishment.— In the case of Pakistan coin—Imprisonment of either description for 7 years and fine. In the case of other coins—Imprisonment of either description for 3 years and fine. (Ss. 246 & 247).

A person who scoops out part of the coin and puts anything else into the cavity alters the composition of that coin. (Explanation to s. 246).

(2) Altering appearance of any coin or Pakistan coin with intent that it shall pass as a coin of a different description. Punishment.—Same as under sections 246 and 247. (Ss. 248 & 249).

(3) Delivery to another of a coin or Pakistan coin possessed with the knowledge that it is altered. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 10 years and fine. In the case of other coins—Imprisonment of either description for 5 years and fine. (Ss. 250 & 251).

There must be possession with knowledge and fraudulent delivery.

(4) Possession of an altered coin or Pakistan coin by a person who knew it to be altered when he became possessed thereof. Punishment.—In the case of Pakistan coin—Imprisonment of either description for 5 years and fine. In the case of other coins—Imprisonment of either description for 3 years and fine. (Ss. 252 & 253).

Possession must be with intent to defraud.

(5) Delivery to another of a coin as genuine, which, when first possessed, the deliverer did not know to be altered. Punishment.—Imprisonment of either description for 2 years or fine upto ten times the value of the coin for which the altered coin is passed. (S. 254).

2. Offences Relating to Government Stamps.—The following offences relate to Government stamps :—

(1) Counterfeiting, or performing any part of the process of counterfeiting a Government stamp. Punishment.—Transportation for life or imprisonment for 10 years and fine. (S. 255).

A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination. (Explanation to s. 255).

(2) Having in possession any instrument for the purpose of counterfeiting a Government stamp. Punishment.—Imprisonment of either description for 7 years and fine. (S. 256).

(3) Making, buying or selling any instrument for the purpose of counterfeiting a Government stamp. Punishment.—Same as under section 256. (S. 257).

(4) Sale of a counterfeit Government stamp. Punishment.—Same as under section 256. (S. 258).

(5) Having in possession a counterfeit Government stamp intending to use or dispose of the same as genuine. Punishment.—Same as under section 256. (S. 259).

(6) Using as genuine a counterfeit Government stamp knowing it to be counterfeit. Punishment.—Imprisonment of either description for 7 years or fine or both. (S. 260).

(7) Fraudulently (or with intent to cause loss to Government) removing or effacing any writing from any substance bearing a Government stamp, or removing from any document the stamp used for it. Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 261).

(8) Fraudulently (or with intent to cause loss to Government) using a Government stamp known to have been used before. Punishment.—Imprisonment of either description for 2 years or fine or both. (S. 262).

(9) Fraudulently (or with intent to cause loss to Government) erasing, or removing from a Government stamp, any mark denoting that the same has been used ; or knowingly having in possession, or selling or disposing of a Government stamp from which such a mark has been erased or removed. Punishment.—Imprisonment of either description for 3 years or fine or both. (S. 263).

(10) Making, knowingly uttering, dealing in or selling any fictitious stamp or knowingly using for any postal purpose any fictitious stamp ; or having in possession, without any lawful excuse, any fictitious stamp ; or making, or without lawful excuse, having in possession, any die, plate, instrument or materials for making any fictitious stamp. Punishment.—Fine of Rs. 200. Any such stamp, die, plate, instrument or materials in the possession of any person for making any fictitious stamp may be seized and shall be forfeited. (S. 263A).

"Fictitious stamp" means any stamp falsely purporting to be issued by Government for the purpose of denoting a rate of postage or any facsimile or imitation or representation, whether on paper or otherwise, of any stamp issued by Government for that purpose. (S. 263A).