

**JOINT SELECT COMMITTEE
REPORTS OF LEGISLATIVE
ASSEMBLY - 1923**

The Indian Official Secrets Bill

LEGISLATIVE DEPARTMENT.

We, the undersigned, Members of the Select Committee to which the Bill to assimilate the

Paper No. I. From the Secretary to the Hon'ble the Agent to the Governor General and Chief Commissioner in Baluchistan, No. 214-J., dated the 2nd May, 1922.

From the Registrar of the High Court of Judicature at Fort William in Bengal, No. 3599-G., dated the 5th May, 1922.

From the Chief Commissioner, Delhi, No. 2-Camp, Legislative, dated the 10th June, 1922.

From the Chief Secretary to Government, Central Provinces, No. C-1324-V., dated the 14th June, 1922.

From the Chief Commissioner, Ajmer-Merwara, No. 820, dated the 15th June, 1922.

Paper No. II. From the Secretary to the Chief Commissioner of Coorg, No. 2107-34-22, dated the 21st June, 1922.

From the Secretary to the Government of Burma, Legislative and Judicial Departments, No. 209-V.-22, dated the 20th June, 1922, and enclosures.

From the Chief Secretary to the Government of Bengal, No. 10287-P., dated the 28th June, 1922.

From the Secretary to the Government of Bihar and Orissa, Judicial Department, No. 444-J. A.-13-22-J., dated the 1st July, 1922.

From the Chief Secretary to the Government of Madras, No. 550, dated the 1st July, 1922.

Paper No. III. From the Chief Secretary to the Government of Assam, No. J.-596-3005-G. J., dated the 3rd July, 1922, and enclosure.

From the Chief Secretary to Government, United Provinces, No. 756-C., dated the 17th July, 1922, and enclosures.

From the Home Secretary to Government, Punjab, No. 2214-S. (Judicial), dated the 14th July, 1922, and enclosures.

From the Deputy Secretary to the Government of Bombay, Home Department, No. 1879-Poll., dated the 20th July, 1922, and enclosure.

From the Chief Commissioner, North-West Frontier Province, No. 2586-G. N., dated the 24th July, 1922.

Preamble.—The alteration in paragraph 3 more correctly describes the contents of the Bill.

Clause 1 (2).—The ex-territorial scope of the Bill has been extended to include a class of persons for whom the Indian Legislature is competent to legislate.

Clause 2 (7).—An inclusive definition of "photograph" has been inserted as sub-clause (7) and the definition of "office under His Majesty" has been enlarged to include expressly officers in the service of the United Kingdom, and has been transferred to its proper place in the clause. This has involved renumbering.

Clause 2 (8) as renumbered.—The definition of "prohibited place" has been restricted with a view to applying it, in respect of telegraphs and telephones, only to military telegraphs and telephones and in respect of factories and dockyards only to those factories and dockyards which besides belonging to or being occupied by or on behalf of His Majesty are also used for any of the purposes mentioned in the last part of the definition.

In the interests of the public we have provided that a place notified under (c) or (d) as a prohibited place shall not become a prohibited place until a copy of the notification in English and in the vernacular of the locality is affixed thereto.

Clause 3 (1).—Offences under this section cover a very wide field and many of them even in their most aggravated form would not merit the maximum penalty provided by the clause. We have therefore introduced two separate maxima, retaining the maximum of fourteen years for the graver offences specified by us and introducing a maximum of three years for other offences under the section. The line of distinction, which we have laid down, is approximately the line between what we may call civil secrets on the one hand and secrets of defence on the other. For the same reason we have removed the minimum penalty of three years altogether.

The alteration of the word "neighbourhood" to the word "vicinity" is made because the latter word is used in clause 7 and it is desirable that the same word should be used in both clauses.

Clause 3 (2).—We have limited the application of the provisions of the first part of this sub-clause, which facilitates proof of a purpose prejudicial to the safety or interests of the State, to prosecutions for the graver class of offences for which we have retained the maximum penalty of fourteen years under sub-clause (1); and in respect of those offences for which a special presumption was introduced in the second part of this sub-clause, we have limited the operation of that presumption by providing that it shall not be raised by the mere fact of the accused having improperly made, obtained, etc., a document of the nature covered by the

law in British India

relating to official

secrets to the law in

force in the United

Kingdom was referred,

have considered the

Bill and the papers

noted in the margin,

and have now the

honour to submit this

our Report, with the

Bill as amended by us

annexed thereto.

Mr. Neogy having intimated that he is unable to accept the amendment to which the rest of the Members of the Committee are agreed in respect of the extent of the application of this sub-clause and that he proposes to move to expunge the whole of this sub-clause, it is necessary to point out that this sub-clause is taken from section 1 of the Official Secrets Act, 1911, which is at present in force in British India, and that the changes proposed by the Committee constitute in their opinion the furthest limit up to which it is reasonable to suggest that abatement should be made for British India from the provisions of the law now in force.

The substitution of the words "shall be presumed" for the words "shall be deemed unless the contrary is proved" in this sub-clause and in clause 4 (2) (a) and for the words "shall be deemed" in clause 4 (2) (c) and the substitution in clause 4 (1) of the words "shall be relevant for the purpose of proving" for the words "shall be evidence" are for the purpose of assimilating the drafting of this Bill to the provisions of the Indian Evidence Act, 1872.

Clause 4 (2).—In (b) and (c) the words "reasonably suspected" have been expanded in order to make it clear that it is the Court which entertains the suspicion. This is effected by the use of the words "it appears" [*cf.* clause 3 (2)].

Clause 5 (1).—In (a) we have inserted the word "wilfully" as we do not think that negligent communication should be punishable except to the extent to which it is punishable under (d). We have made a similar insertion in (c) for the same purpose. We have also inserted the words "or in a Court of Justice" in order to protect public officers who have used their discretion under section 124 of the Indian Evidence Act.

Clause 5 (2).—We have thought it right to shift the burden of proof that the receipt was voluntary on to the prosecution.

Clause 6 (1).—We consider that the ordinary penal law provides a sufficient penalty for most, if not for all, of the offences created by this clause, and we accordingly think that the penalty provided by this clause should only be enforceable where the safety of the State is affected. We have therefore struck out the words "or interests" in sub-clauses (1), (2) and (3).

Clause 6 (2).—We consider that in respect of all the offences created by sub-clause (2) it should be necessary for the prosecution to prove that the acts complained of were done for a purpose prejudicial to the safety of the State. For the insertion of the word "wilfully" compare note on clause 5(1).

Clause 6 (3).—The re-drafting of this sub-clause is mainly consequential on the changes made in sub-clauses (1) and (2) of this clause, but we have thought it right, following the principle which we laid down when considering clause 3, to restrict the operation of this sub-clause, which facilitates the proof of a purpose prejudicial to the safety of the State, to prosecutions for the graver offences under this clause.

Clause 7 (2).—The amendment is of a drafting nature only.

Clause 8 (1).—We have limited the duty of giving information on demand of various persons to the graver offences under the Bill.

Clause 10.—We have recast clause 10 to make it clear that it creates two separate offences and we have removed the ambiguity caused by the use of the words "omits or refuses" and have required that information shall be given on demand to the police officers who may demand it under clause 8.

Clause 11.—The amendment is necessary, first, to give powers under this clause to Presidency Magistrates who, though they exercise powers of the same nature as Magistrates of the first class, do not come within that description and, secondly, to give powers to Sub-divisional Magistrates who may be Magistrates of the second class. We have added a new sub-clause to provide for report to the Magistrate where in a case of emergency the police officer has taken action under sub-clause (2).

Clause 12.—The Bill as it stands makes all offences non-bailable and cognizable. We think that only the graver offences should be so classed, and we have accordingly revised the clause. At the same time we realise that in all non-cognizable cases a warrant should ordinarily issue in the first instance.

Clause 13.—The Committee have proposed no change in this clause, but, as Mr. Neogy has intimated that he proposes to dissent on the ground that all offences under the Act should be triable only by a Court of Session, the Committee think it right to express their views in favour of retaining the clause as it stands. Under the Indian Official Secrets Act, 1889, all Magistrates of the first class were authorised to try offences under the Act, while under the Bill it is provided that the only Magistrates who may try cases shall be those described in sub-clause (1) of this clause. Mr. Neogy relies on sub-section 3 of section 10 of the Official Secrets Act, 1911, in which it is laid down that an offence under that Act shall not be tried by any Court outside the United Kingdom, which has not jurisdiction to try crimes which involve the greatest punishment allowed by law. As the Bill stands, read with the second schedule to the Code of Criminal Procedure, the graver offences punishable under section 3 with imprisonment up to fourteen years will be triable only by Court of Session; and the Committee are of opinion that the other offences under the Act can properly be tried by Magistrates of the rank named in sub-clause (1) and that conclusions based on the powers of the magistracy of the United Kingdom are merely misleading. They note moreover that under the Official Secrets Act, 1920, all misdemeanours under that Act and under the Act of 1911 are triable summarily with the

consent of the Attorney-General and at the same time they do not forget that any person brought up for summary trial can claim to be tried at the assizes. They have also observed that on a trial under the Summary Jurisdiction Act, the maximum sentence of imprisonment is three months even though on a trial for the same offence at the assizes on indictment the maximum sentence for the same offence is two years. In the opinion of the Committee the decisive factor should be that this Bill sets out to adapt the provisions of the English Acts of 1911 and 1920 to Indian conditions and the Indian Legislature is the best judge as to the capacity of Magistrates in British India to try cases under the Act.

Clause 15.—We have thought it right to shift the burden of proof of knowledge and consent on to the prosecution.

The remaining changes are small changes of drafting and do not require comment.

2. The Bill was published as follows:—

In English.

<i>Gazette.</i>	<i>Date.</i>
Gazette of India	11th March, 1922.
Fort Saint George Gazette	28th March, 1922.
Bombay Government Gazette	11th May, 1922.
Calcutta Gazette	19th April, 1922.
United Provinces Gazette	22nd April, 1922.
Punjab Government Gazette	24th March, 1922.
Burma Gazette	22nd April, 1922.
Central Provinces Gazette	1st April, 1922.
Assam Gazette	20th March, 1922.
Coorg District Gazette	1st April, 1922.
Sind Official Gazette	16th May, 1922.
Bihar and Orissa Gazette	12th April, 1922.

In the Vernaculars.

<i>Province.</i>	<i>Language.</i>	<i>Date.</i>
Madras	Tamil	23rd May, 1922.
	Telugu	23rd May, 1922.
	Hindustani	6th July, 1922.
	Kanarese	13th June, 1922.
	Malayalam	23rd May, 1922.
Bombay	Marathi	8th June, 1922.
	Gujarathi	8th June, 1922.
	Kanarese	8th June, 1922.
Burma	Burmese	20th April, 1922.
Sindh	Sindhi	1st June, 1922.

3. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

W. M. HAILEY.

E. BURDON.

K. C. NEOGY.*

J. CHAUDHURI.

DARCY LINDSAY.

T. RANGACHARIAR.

JAMNADAS DWARKADAS.

DELHI; }
The 30th January 1923. }

*Subject to a note of dissent.

Note of Dissent.

While recognising the importance of the changes effected in this Bill in the Select Committee, I regret to have to append this Minute of Dissent on the following points:—

Clause 3.—It will constitute an offence under this clause ("Spying"). "If any person for any purpose prejudicial to the safety or interests of the State—(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy." This is taken from sub-section (1) of section 1 of the English Statute of 1911 as amended in 1920. The principal ingredient in this offence is that the purpose of such person shall be "prejudicial to the safety or interests of the State". And the first part of sub-clause (2) of this clause, as it originally stood, was to the effect that "it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State". This was taken from sub-section (2) of section 1 of the Statute of 1911.

As the result of an amendment in the Select Committee, this special rule of evidence will apply only to offences committed in relation to any work of defence, arsenal, naval, military or air force establishment of station, mine, mine-field, factory, dockyard, camp, ship or aircraft, or otherwise, in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code; the other offences being left to be tried according to the normal procedure. For the sake of convenience, I shall refer hereafter to these two classes of offence as military and non-military offences respectively. The distinction between these two classes of offence will, briefly, operate in the following manner:—

- (1) The maximum sentence in the case of the military offences will be imprisonment for 14 years. The maximum sentence for non-military offences will be imprisonment for 8 years.
- (2) In the case of military offences, evidence of overt acts will not be necessary for proving that the purpose of an accused person was prejudicial to the safety or interests of the State, evidence of conduct or character being enough for the purpose. In the case of non-military offences, the ordinary rule of evidence will apply.
- (3) Military offences will be cognisable and non-bailable. Non-military offences will be non-cognisable and bailable.

This distinction is an improvement so far as it goes. But I must express my inability to see how this distinction, in so far as it recognises two different rules of evidence, can be supported in principle. If overt acts have got to be proved in non-military offences in order to establish that a person acted with a purpose prejudicial to the safety or interests of the State, why should an exception be made in this matter in regard to military offences, when particularly they are punishable with a much longer term of imprisonment? The only consideration that influenced the Committee in adhering to the provisions of the English Statute of 1911, in the matter of military offences, was that these provisions did already apply to India, as the Statute of 1911 was made applicable to all British possessions; and that unless they were re-enacted, at least in the case of military offences, His Majesty in Council could not be expected to withdraw the operation of the Statute of 1911, in favour of the present Bill, under section 11 of that Statute.

It has to be admitted that the Statute of 1911 does not recognise any distinction between these two classes of offence; and if the present Bill be substituted for that Statute, a certain class of offence will fall outside the purview of the special rule of evidence laid down in the said Statute. At the same time, I deeply regret I am unable to agree to the special rule of evidence in the case of military offences, as a consideration for the withdrawal of the operation of the Statute of 1911 from India. If the British Parliament undertakes the responsibility of legislating for India in any matter—as it has done in the present instance—a subordinate legislature like that of India can do nothing by way of amendment of any such measure to suit the local circumstances, however much it may desire to do so. But this position of helplessness, I venture to think, can hardly be an argument for inducing us to re-enact any of the provisions of such a parliamentary measure with the help of our willing votes in the Indian Legislature, even though we may disapprove of it. I have not, therefore, allowed myself to be in any way influenced by the fact that the particular provision which does not commend itself to me on its merits, finds place in the Statute of 1911 and is therefore already applicable to India.

When this provision of the English Statute of 1911 was under discussion in the House of Commons, the then Attorney-General Sir Rufus Isaacs (now Lord Reading) defended it on the ground that "the sense of justice in this country is perfectly fair to all persons, and there would be no danger to anyone engaged in something perfectly innocent". It is to be noted

that the provision was sought to be defended not so much on its merits, as on an extraneous consideration. It might have been different if it had been said that the combination of circumstances in which a presumption of guilt could arise, was sufficiently strong to exclude the possibility of any innocent person being convicted. When the amending Statute of 1920 was being passed, reference was made in Parliament to the safeguards that exist in the British system of judicial administration against any abuse of a provision of this kind. In my humble opinion, conditions in India, governing investigation and trial of such offences as we are creating in this Bill, are different from conditions prevailing in England.

The expressions used in clause 3, sub-clause (1) are so wide that, in my view it would be a danger to relax the rule of evidence for the purpose of facilitating proof in the case of military offences. If a person were to approach, or were found in the "vicinity" of a "prohibited place" (for instance, a military camp or fortress), he would make himself liable for prosecution, provided his purpose in being there were prejudicial to the safety or interests of the State. It may be said that as this proviso controls the other element constituting the offence, the chances of abuse are reduced to a minimum. But under sub-clause (2), it will not be necessary to establish this all-important circumstance, in the case of military offences, by evidence of any overt act tending to show a purpose prejudicial to the safety or interests of the State. It may be enough to adduce some evidence of general repute ("his known character as proved" in the case) against such a person. And cases may arise in which conviction will be secured on sheer suspicion.

Lord Alverstone, while admitting the difficulties that had been experienced in England in instituting prosecutions under the Statute of 1889, said with reference to the words "known character as proved" used in the Statute of 1911, that it was "opening the door of Criminal Law for which some justification would be required". If this eminent legal authority found it necessary to protest against the use of this expression in the English Statute, how much greater reason have we in India to take exception to it?

As regards the expression, "interests of the State", I have to observe that in the present circumstances of the country, there is a lack of identity of interests between the State and the people. We are just now engaged in a struggle for constitutional privileges, and circumstances can well be imagined in which the interests of the State, as represented by the Executive Government, may become antagonistic to the interests of the people.

While considering clause 3 of the Bill, I cannot overlook the provisions of clause 4 which merely supplements clause 3. Clause 4 is not to be found in the Statute of 1911, but has been taken from the Statute of 1920. It lays down that communications with "foreign agents" shall be relevant for the purpose of proving that a person has, for a purpose prejudicial to the safety or interests of the State obtained or attempted to obtain information which is calculated to be or might be, or is intended to be directly or indirectly useful to an enemy. Sir Gordon Hewart (now Lord Hewart, Chief Justice of England) who was then in charge of the measure in the House of Commons, characterised this as a "quite deliberately drastic provision" which experience showed to be vitally necessary. This justification has not been shown to exist in India. Even then, one could be quite prepared to agree to sub-clause (1) of clause 4, had its scope not been so widened by sub-clause (2). The latter sub-clause lays down that a person shall be presumed to have been in communication with a foreign agent if he has, either within or without British India, visited the address of a foreign agent, or if either within or without British India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person. The definition of a foreign agent, which follows, brings in persons reasonably suspected of being employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State. The address of a foreign agent, again, will include, among other things, any address reasonably suspected to be an address used for the receipt of communications intended for a foreign agent. These provisions are in such general terms that innocent persons visiting foreign countries and carrying some information about foreign people may sometimes find themselves unwittingly entrapped. It is to be noted that for the purpose of raising a presumption of guilty intention against anyone possessing an address of, or other information about any person suspected to be a foreign agent, it will not be necessary to prove that such possession was with knowledge that the said person was so suspected. Mere possession even of an unsolicited address or information may, in certain circumstances, be enough to condemn the possessor, if he is on trial under clause 3 of the Bill.

Lieutenant-Commander Kenworthy, M.P., while criticising in the House of Commons the corresponding provision in the Statute of 1920, drew a picture which so well fits in with Indian conditions, that I desire to reproduce it here in his words as indicating a not altogether impossible development of things in this country:—

"What is to prevent some unscrupulous secret service official to send to me under cover the address of some foreign agent, and then to search my house next day?.....Very often the most successful spies are men that no ordinary person would have anything to do with at all, the sort of people who ought to be in jail, who live by their skill and quick wits.....What is to prevent them, if they have to earn their pay and make their reputation, cooking up a case against anybody objectionable to Government in that sort of way?"

Clause 13.—This clause says down, among other things, that only District and Presidency Magistrates, and other Magistrates with first class powers specially empowered in this behalf by the local Government shall be entitled to try any offence under the present Bill. The English Statute of 1911 took care to provide that an offence under that Statute “shall not be tried by any court of general or quarter sessions, nor by the Sheriff Court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law”. Under this provision, a trial for any offence contemplated by that Statute cannot be held by any Court in India except the Court of Sessions.

The offences which the English Statute of 1911 have created, are

- (1) Spying—Felony.—Penal servitude for not less than 3 years and not exceeding 7 years (increased to 14 years under Statute of 1920).
- (2) Wrongful communication of, or receiving, information—Misdemeanour.—Imprisonment up to two years.
- (3) Harboursing spies—Misdemeanour.—Imprisonment up to two years.

In the present Bill the above offences find place in clauses 3, 5 and 10 respectively, with this difference that there is no minimum penalty for spying, the maximum being imprisonment for fourteen years in the case of military offences, and for three years in non-military offences. The other offences which the present Bill creates are taken from the English Statute of 1920, and are as follows:—

- (1) Unauthorised use of uniforms, falsification of reports, etc.
- (2) Interfering with Police or the Military near a prohibited place.
- (3) Refusal to give information about offences under the Bill.

They are all in the nature of misdemeanours and are punishable with imprisonment up to two years.

As already stated, all offences under the Statute of 1911—felony and misdemeanour alike—must be tried exclusively by the Courts contemplated in sub-section (3) of section 10 of the Statute of 1911, which, in the case of India, are the Courts of Sessions. Under the present Bill, however, only “spying” when a military offence shall be exclusively triable by a Court of Sessions. The position of an accused person will, therefore, be worse in the other cases, under the present Bill, than under the English Statute of 1911 which it is intended to replace.

Apart from this consideration, I am not prepared to make any offence under the present Bill triable except by a Court of Sessions, in view of the far too general and sweeping character of its provisions.

K. C. NEOGY.

Delhi, January, 30, 1923.

(Words printed in italics indicate the amendments suggested by the Committee.)

A

BILL

TO

Consolidate and amend the law in British India relating to official secrets.

WHEREAS the law in British India relating to official secrets is at present contained in two Acts of the Governor General in Council, namely, the Indian Official Secrets Act, 1859, and the Indian XV of 1889. Official Secrets (Amendment) Act, 1904, and one V of 1904. Statute of Parliament, namely, the Official Secrets 1 & 2 Geo. V, c. 28. Act, 1911; and

WHEREAS the Official Secrets Act, 1911, has 1 & 2 Geo. been amended by the Official Secrets Act, 1920, V, c. 28. which Statute applies to the United Kingdom and 10 & 11 Geo. V, c. to certain British possessions, but not to British 75. India; and

WHEREAS it is expedient that the law relating to official secrets in British India should be *consolidated and amended*;

It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Section 1, Short title, extent and Official Secrets Act, Act XV of application. 192 . 1889.

(2) It extends to the whole of British India, and applies also—

(a) to all subjects of His Majesty *and servants of the Crown* within the dominions of Princes and States in India in alliance with His Majesty; and

(b) to all Indian subjects of His Majesty without and beyond British India.

2. In this Act, unless there is anything re- Section 12 of Definitions. pugnant in the subject or 1 & 2 Geo. context— V, c. 28.

(1) any reference to a place belonging to His Majesty includes a place occupied by any department of the Government, whether the place is or is not actually vested in His Majesty;

(2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining Section 12, 1 any sketch, plan, model, article, note & 2 Geo. or document, include the copying or V, c. 28. causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article,

- note or document include the transfer or transmission of the sketch, plan, model, article, note or document ;
- (3) "document" includes part of a document ;
- (4) "model" includes design, pattern and specimen ;
- (5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use ; Section 9 (2) of 10 & 11 Geo. V, c. 75.
- (6) "Office under His Majesty" includes any office or employment in or under any department of the Government or of the Government of the United Kingdom or of any British possession ;
- (7) "photograph" includes an undeveloped film or plate ;
- (8) "prohibited place" means— Section 3 of 1 & 2 Geo. V, c. 23.
- (a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, His Majesty, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war ; Section 10 of 10 & 11 Geo. V, c. 75.
- (b) any place not belonging to His Majesty where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired, gotten or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty ; Section 3 of 1 & 2 Geo. V, c. 23.
- (c) any place belonging to or used for the purpose of His Majesty which is for the time being declared by the Governor General in Council, by notification in the Gazette of India, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality ;
- (d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith) or any place used for gas, water or electricity

works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared by the Governor General in Council, by notification in the Gazette of India, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;

(9) "sketch" includes any photograph or other mode of representing any place or thing; and Section 13
of 1 & 2
Geo. V, c.
28.

(10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the Governor General in Council or by any Local Government.

3. (1) If any person for any purpose pre- Section 1
of 1 & 2
Geo. V, c.
28.
judicial to the safety or
Penalties for spying interests of the State—

(a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; or

(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy;

he shall be punishable with imprisonment for a term which may extend, where the offence is committed in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft, or otherwise in relation to the naval, military or air force affairs of His Majesty or in relation to any secret official code, to fourteen years and in other cases to three years.

(2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any

secret official code or pass word is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interest of the State.

4. (1) In any proceedings against a person for Section 2 of Communications with an offence under section 3, 10 & 11 foreign agents to be the fact that he has been Geo. V, c. 76. evidence of commission of in communication with, certain offences.

or attempted to communicate with, a foreign agent, whether within or without British India, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision,—

(a) a person shall be presumed to have been in communication with a foreign agent if—

(i) he has, either within or without British India, visited the address of a foreign agent or consorted or associated with a foreign agent, or

(ii) either within or without British India, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person ;

(b) the expression " foreign agent " includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without British India, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without British India, committed, or attempted to commit, such an act in the interests of a foreign power ;

(c) any address, whether within or without British India, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent re-ides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be presumed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

5. (1) If any person having in his possession or control any secret official word or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or *relates to* anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract—

- (a) *wilfully* communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it, or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or
- (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; or
- (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or *wilfully* fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or
- (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this section.

(2) If any person *voluntarily* receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interests of the State, he shall be guilty of an offence under this section.

(4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

6. (1) If any person for the purpose of gain—
 Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents.
 ing admission or of assisting any other person to gain admission to a prohibited place or for any

Section 2
of 1 & 2
Geo. V, s. 23.

Section 2(1)
of 10 &
11 Geo. V,
s. 75.

Section 9(1)
of 10 & 11
Geo. V,
s. 75.

Section 1 of
10 & 11
Geo. V,
s. 75.

other purpose prejudicial to the safety of the State—

- (a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
- (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
- (c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or
- (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under His Majesty, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or
- (e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or uses, or has in his possession or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of an offence under this section.

(2) If any person for any purpose prejudicial to the safety of the State—

- (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or *witfully* fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or
- (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word

so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police officer; or

- (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid;

he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of His Majesty, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. (1) No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, any police officer, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place. Section 8 of 10 & 11 Geo. V, c. 75.

(2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by an Inspector-General or Commissioner of Police in this behalf, or to any member of His Majesty's forces engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information. Section 6 of 10 & 11 Geo. V, c. 75.

(2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner, as if he had committed such offence. Section 7 of 10 & 11 Geo. V, c. 75.

0. (1) If any person knowingly harbours or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section.

Section 5
of 1 & 2
Geo. V, c. 28

(2) It shall be the duty of every person having harboured any such person as aforesaid, or permitted to meet or assemble in any premises in his occupation or under his control any such persons as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General or Commissioner of Police in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. (1) If a Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note or document, or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

Section 9
of 1 & 2
Geo. V, c. 28

(2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any police officer the like authority as may be given by the warrant of a Magistrate under this section.

(3) Where action has been taken by a police officer under sub-section (2) he shall, as soon as may be, report such action, in a Presidency town to the Chief Presidency Magistrate, and outside such town to the Sub-divisional Magistrate.

12. Notwithstanding anything in the Code of Criminal Procedure, V of 1898.
Power to arrest. 1898—

(a) an offence punishable under section 3 or under section 3 read with section 9 with imprisonment for a term which may extend to fourteen years shall be a cognizable and non-bailable offence ;

(b) an offence under clause (a) of sub-section (1) of section 6 shall be a cognizable and bailable offence; and

(c) every other offence under this Act shall be a non-cognizable and bailable offence, in respect of which a warrant of arrest shall ordinarily issue in the first instance.

13. (1) No Court (other than that of a Section 10 (3) Magistrate of the first class specially empowered in this behalf by the Local Government) which is inferior to that of a District or Presidency Magistrate shall try any offence under this Act. Geo. V, c. 28.

(2) No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf: Section 3 of 1 and 2 Geo. V, c. 28.

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

(3) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in British India in which the offender may be found. Section 8 (3) of 10 & 11 Geo. V, c. 75.

14. (1) In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make an order to that effect, but the passing of sentence shall in any case take place in public. Section 8 (4) of 10 & 11 Geo. V, c. 75.

15. Where the person guilty of an offence under this Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence. Section 8 (5) of 10 & 11 Geo. V, c. 75.

16. The Indian Official Secrets Act, 1889, and XV of 1889, the Indian Official Secrets (Amendment) Act, 1904, V of 1904, are hereby repealed. Repeals.

GOVERNMENT OF INDIA.
LEGISLATIVE DEPARTMENT.

Report of the Select Committee on the
Bill to consolidate and amend the Law
in British India relating to official
secrets, with the Bill as amended.