LAW COMMISSION OF INDIA

FORTY-EIGHTH REPORT

ON

SOME QUESTIONS UNDER THE CODE OF CRIMINAL PROCEDURE BILL, 1970

July 1972

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LAW COMMISSION,
'A' Wing, 7th Floor,
Shastri Bhavan, New Delhi-1.

July 25, 1972.

P. B. GAJENDRAGADKAR,
CHAIRMAN

I am forwarding herewith the Forty-eighth Report of the Law Commission on some questions under the Code of Criminal Procedure Bill, 1970.

The circumstances under which these questions came to be considered by the Commission and the scope of the Report have been explained in the first paragraph of the Report. As the Report points out, we thought it necessary to consider some other points which, in our opinion, were important enough to invite our recommendations **suo motu.**

As you are aware, the present reference was made at the instance of the Ministry of Home Affairs, and we understand that the Joint Committee of Parliament is dealing with the Bill pertaining to the reform of the Code of Criminal Procedure clause by clause. I am, therefore, sending another copy to you to enable you to forward it to the Ministry of Home Affairs, for their information and suitable action.

With personal regards,

Yours Sincerely,
P. B. GAJENDRAGADKAR.

Hon'ble Shri H. R. Gokhale,
Minister of Law and Justice,
Shastri Bhavan,
New Delhi-1.

REPORT ON SOME QUESTIONS UNDER THE CRIMINAL PROCEDURE CODE BILL, 1970

Introductory.

1. This Report deals with a few important points relating to the Code of Criminal Procedure. It is necessary to give briefly the genesis of the present Report, in order to understand its limited scope.

Points referred to the present Commission.

2. The previous Law Commission submitted, some time ago, a Report[1] on the entire Code of Criminal Procedure. Government have thereafter introduced the Criminal Procedure Code Bill, 1970, which is, at present, pending before a Joint Committee of both the Houses. In the meantime, Government decided to seek the opinion[2] of the present Commission on a few points, the reasons for which have been stated as follows:

> "As there are divergent opinions on certain points which are being considered by the Joint Committee in respect of the said Bill, the Government would like to have the considered opinion of the present Law Commission on certain specific points hereinafter mentioned. As the consideration of the Bill, clause by clause, has already been taken up by the Joint Committee of Parliament, it would not be necessary to refer the whole Bill for the opinion of the Law Commission afresh. But the Government would very much like to have the considered opinion of the Commission on a few specific vital points which have arisen for consideration."

These points are—

(i) Proposal to confer jurisdiction on the C.B.I. to make investigations in respect of certain offences relating to the Union List;

(ii) Proposal to make confessions made to senior police officers admissible in evidence subject to certain safeguards;

(iii) The extent of legal aid to the poor which may be provided for in the Code;

(iv) Suggestions for improving the existing law contained in sections 161 and 162 relating to statements made to the police during investigation;

(v) Proposal to take away powers of revision against interlocutory orders;

(vi) Provision for grant of anticipatory bail;

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[1] 41st Report of the Law Commission.

[2] Letter of the Law Minister to the Chairman, Law Commission, dated 1st July, 1972.

(vii) Question whether maintenance under section 488 can be provided for in respect of indigent parents;

(viii) Provision for filing written arguments; and

(ix) Suggestions for improvements in other respects with a view to curtail delays in investigation, trial or appeal.

Additional points dealt with in this Report.

3. Besides these points, we considered it desirable to take the opportunity of expressing our views on the following additional points:

Point (x)—Power of "appointment" of Sessions Judges and other officers.
Point (xi) —Design to commit offences.
Point (xii) —Statements recorded by Magistrates.
Point (xiii) —Commitment proceedings.
Point (xiv)—Examination of the accused.
Point (xv) —Sentencing.
Point (xvi) —Consultation by the Government with the Court, before pardon, remission etc.
Point (xvii)—Appeals against acquittal.
Point (xviii)—Appeals under article 134 of the Constitution.
Point (xix)—Maintenance (other points).
Point (xx) —Cancellation of maintenance orders.

That is the genesis and the scope of the present Report.

Points considered.

4. We shall now deal with the points listed above[1], one by one.

(i)—Proposal to confer jurisdiction on the C.B.I. to make investigation in respect of certain offences relating to the Union List.

5. There is, it appears, a proposal to confer jurisdiction on the Central Bureau of Investigation to conduct investigation in respect of certain offences relating to subjects mentioned in the Union List. This question has two aspects, namely, the constitutional aspect, and the practical aspect. So far as the constitutional aspect is concerned, a view seems to prevail in some quarters that since the subject of 'police' is mentioned in the State List[2], it is beyond the competence of Parliament to make a provision for the investigation of offences by the Central Bureau of Investigation,—excepting under special legislative entries—e.g. the special entry relating to extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside the State[3].

6. We do not share this view. The Central Bureau of Intelligence and Investigation are subjects mentioned in the Union List[4]. The power to investigate offences against laws with res-

[1] Para. 2—3, supra.
[2] State List, Entry 2.
[3] Union List, Entry 80.
[4] Union List, Entry 8.

pect to any of the matters in the Union List, could be attributed either to the entry relating to such offences[1], or to the entry relating to criminal procedure[2], or, in the last report, to the residuary power. It is, in our opinion, not correct to assume that because "police" is a State subject, and because investigation of offences is ordinarily done by the police, it is incompetent for Parliament to confer such power on any other agency.

7. We agree with the proposal in principle. We think it desirable from many points of view, and so we suggest that the investigation and prosecution of offences under the principal Central enactments be included within the scope of the jurisdiction of the Central Bureau of Investigation. The various offences to be brought within the proposals have not been specified, and we do not go into those details. We should also, add, that for settling any conflict of jurisdiction between the Central Bureau of Investigation and other investigating agencies that may arise, some suitable machinery should be provided for. Further, we are anxious that the Central Bureau of Investigation should not be denied jurisdiction under the proposed provision to investigate an offence merely because, on the facts under investigation, commission of another offence is disclosed which falls within the province of a State investigating agency.

We may point out that a very substantial increase will be necessary in the strength of investigating officers of the Central Bureau of Investigation, if the above change is to produce the desired results.

Recommendation for creation of courts under Union legislation.

8. It also appears to us that it would be desirable to create a separate hierarchy of courts for the trial of these offences[3]. Since the power to investigate the offences is being given to a Central agency, it would be appropriate to create separate courts functioning under Union legislation for the trial of those offences. Expertise and speed are important in the disposal of these cases, and our recommendation will be a step in that direction. The structure and procedure of these courts will, of course, require detailed consideration. The subject has, to an extent, been touched upon in our Report on social and economic offences[4].

Proposal to make confessions made to senior police officers admissible in evidence subject to certain safeguards.

9. Another proposal relates to confessions. The proposal to make confessions made to senior police officers admissible in evidence (subject to certain safeguards), has a long history. In recent years, the question fell to be considered by the Law Commission. In its Report on the Reform of Judicial Administration[5], while adopting a cautious approach, the ommission

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1 Union List, Entry 93.
2 Concurrent List, Entry 2.
3 Cf. article 247 of the Constitution, read with Union List, entries 95 and 97.
4 47th Report of the Law Commission.
5 14th Report, Vol. 2, page 748, para. 38 and 39.

suggested, as an experimental measure, an amendment of a very limited character, to the effect that confessions made to senior police officers in selected areas (mainly, Presidency Towns), should be admissible, thus overriding the bar laid down in section 25 of the Evidence Act. Since then, this question has been mooted at almost all discussions where criminal procedure in general and the powers of the police in particular have come up for consideration. (The suggestion made in the 14th Report of the Commission[1] was that as the superior officers of the police are today recruited from the same social strata as officers of other departments, confessions made to the officers of the status of the Deputy Superintendent of Police and above should be acceptable in evidence, the relaxation being restricted to cases which such officers themselves investigate and being introduced as an experimental measure only in the Presidency towns or places of like importance where investigation can be conducted by superior police officers and where the average citizen would be more educated and conscious of his rights. The change, it was suggested, should be introduced in the three Presidency towns, because the magistracy there is directly under the control of the High Court; as regards the introduction of the change in other areas, it was observed, it should be preceded by the separation of the judiciary from the executive).

10. It appears to us that it would be desirable to deal with several aspects of the problem; and we proceed to discuss the matter in some detail, bearing in mind that separation of the executive and the judiciary has been effected in most of the States.

11. Interrogation as a method of investigating violations of the law has a long history. Within the first few pages of the Old Testament[2], Adam is asked "Hast thou eaten of the tree. . . ?"; to the demand "where is Abel thy brother ?" Cain replies with an evasive "Am I my brother's keeper?"

But, as is well known, official interrogation of those suspected of crime, has been regarded with deep suspicion in Anglo-American legal systems. In England, this distruct was engendered by the inquisitorial practices of the prerogative courts of Star Chamber and High Commission. In the U.S.A., a host of exclusionary rules have taken birth as a result of the involvement of the courts in this problem. .

Police interrogation for the purpose of obtaining confessions from suspects has been a subject of special concern in India for more than a century.

12. Under the Indian Evidence Act, the admissibility of

[1] 14th Report, Reform of Judicial Administration, Vol. 2, page 748, Paragraphs 38 and 39.

[2] Genesis 3:11, 4:9—10, quoted in Note "Developments in the Law Confessions", (1965) 79 Harvard Law Review 935. 936.

confessions is regulated by several provisions[1]. The prosecution's ability to use confessions is severely limited. Section 24 adopts the English rule that a confession is inadmissible if induced by fear of prejudice or hope of advantage held out by a person in authority. Section 25 states broadly that 'no confession made to a police officer shall be proved as against a person accused of any offence.' Section 26 further provides that all confessions made in custody of a police officer are inadmissible unless made 'in the immediate presence of a Magistrate'. There is an exception in section 27, not material for our purpose.

13. The stringent provision in the Evidence Act was adopted as a response to legislative findings that:[2]

> "(D)espite provisions in the Bengal Code for preventing any species of compulsion or maltreatment with a view to extort a confession....(C)onfessions are frequently extorted or fabricated. A Police-officer,...failing to discover the perpetrators of the offence, often endeavours to secure himself against any charge of supineness or neglect by getting up a case against parties whose circumstances or character are such as are likely to obtain credit for an accusation of any kind against them."

14. The present position is the result of a competition between many sets of conflicting values. On the one hand, for the proper investigation of offences, subjection of the accused person to questioning is regarded as inevitable. It is believed, that law enforcement is unduly hampered by artificial rules restricting the admissibility of material obtained during the investigation. On the other hand, society apprehends that the zeal and power of law enforcement officers may outrun their self-restraint and wisdom. The philosophy behind the almost categorical rule enacted in section 25 and 26 of the Evidence Act[3], is that these safeguards are indispensable to provide against the possibility of extorted confessions. The secrecy in which systematic police questioning is usually carried on, and the protracted questioning which has to be resorted to, have been considered as sufficient justifications for the present strict rules. Nevertheless, it is desirable that the present artificial rules should be replaced by more rational principles—if such principles can be devised.

15. It appears to us that without sacrificing the essential requirement of Voluntariness, it is possible to improve upon the present rule by adding certain safeguards. A sensible legislative approach could lessen some of the obvious dangers of coercion, reduce disputes about the wording of the confession and maintain general fairness in questioning, without unduly hampering investi-

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[1] Sections 24 to 26, Evidence Act.
[2] Indian Law Commissioners, First Report, refer to in Field, The Law of Evidence in British India (1928), page 137.
[3] Para. 13, supra.

gation. We have devoted some thought to the matter. We proceed to deal with the safeguards which we would add. With the addition of these safeguards, the present rigid rule could be modified.

16. The first safeguard is that the officer concerned must be an investigating officer. If the police officer to whom the confession is made is not investigating the offence, the accused can and ought to be sent to a Magistrate.

17. The second safeguard is that the accused must be informed of his right to consult[1] a legal practitioner of his choice, and the accused must also be given an opportunity to consult such a legal practitioner before making the confession. Both these safeguards must be applicable whatever the rank of the police officer.

18. The third safeguard, which we have in mind, is the presence of counsel. Here, a distinction could justifiably be made between senior police officers—Superintendent of Police and above—on the one hand, and the lower police officers, on the other. In the case of senior police officers, it should suffice if the counsel of the accused is allowed to remain present when the confession is recorded. If the accused has no counsel, or if his counsel does not wish to remain present, this requirement will not apply. In the case of lower police officers, counsel **must be** present always; and if the accused has no counsel, or if the counsel cannot remain present, the accused can and ought to be forwarded to a Magistrate, who can then record his confession under section 164.

19. The fourth safeguard, which appears to be necessary, is that the accused must be warned that he is not bound to make a confession, and that the confession, if made, would be used in evidence against him. Further, the fact of such warning having been given must be recorded, and the confession should be accurately taken down. Section 164 of the Code makes a provision with regard to these matters in detail (when confessions are recorded by Magistrates), and it is reasonable to provide that the safeguards should be followed by police officers of whatever rank, when they record confessions under the new procedure. This safeguard must be followed, whether or not a counsel is present.

20. Fifthly, the police officer must record that he has followed the safeguards detailed above. The value of such a requirement is obvious.

21. Our recommendations as to confessions can be thus stated in the form of propositions.

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[1] Article 22(1) of the Constitution.

(1) In the case of a confession recorded by a Superintendent of Police or higher officer, the confession should be admissible in the sense that the bar under sections 25—26, Evidence Act, should not apply if the following conditions are satisfied:—

(a) the said police officer must be concerned in investigation of the offence;

(b) he must inform the accused of his right to consult a legal practitioner of his choice, and he must further give the accused an opportunity to consult such legal practitioner before the confession is recorded;

(c) at the time of the making and recording of the confession, the counsel for the accused, if he has a counsel, must be allowed to remain present. If the accused has no counsel or if his counsel does not wish to remain present, this requirement will not apply;

(d) the police officer must follow all the safeguards as are now provided for by section 164, Cr.P.C. in relation to confessions recorded by Magistrates. These must be followed whether or not a counsel is present;

(e) the police officer must **record** that he has followed the safeguards at (b), (c) and (d) above.

(2) In the case of a confession recorded by an officer lower than a Superintendent of Police, the confession should be admissible in the above sense if the following conditions are satisfied:—

(a) the police officer must be concerned in investigation of the offence;

(b) he must inform the accused of his right to consult a legal practitioner of his choice, and he must further give the accused an opportunity to consult such legal practitioner before the confession is recorded;

(c) at the time of the making and recording of the confession, the counsel for the accused must be present. If the accused has no counsel or if his counsel does not wish to remain present, the confession should not be recorded;

(d) the police officer must follow all the safeguards as are now provided for by section 164, Cr.P.C. in relation to confessions recorded by Magistrates.

(e) the police officer must record that he has followed the safeguards at (b), (c) and (d) above.

22. The above amendments should apply to the whole of India. We recommend an amendment of the Evidence Act and of sections 162 and 164, Cr.P.C. on the above lines[1].

[1] To be implemented with reference to the Evidence Act and clause 165 and 167, Cr.P.C. Bill.

Point (iii)—The extent of legal aid to the poor which may be provided in the Code.

23. We now come to a matter which is of vital interest in connection with the subject of law and poverty. That relates to legal aid to the poor.

Providing equal justice for the poor and the rich, the week and the powerful alike is an age-old problem. The needs of the poor for justice had moved poet Ovid to write—"Curia pauperibus clause est" (The courts are closed to the poor)[1].

In part, the royal concessions of Magna Charta in 1215, dealt with the same problem "To no one **will** we see to no one will We refuse, or delay, right of justice....."[2]

24. The last two decades are of significance in this respect, inasmuch as the matter is no longer considered as one of charity or benevolence, but as one of civil right, and the legal machinery itself is now expected to deal specifically with it. This change of thinking has been lucidly expressed in the statement—

> "If the law is to be open to everyone on the same terms, the law must be the guardian of its own gates."[3]

25. The Cr.P.C. Bill does contain a provision for legal aid to the poor in criminal cases. The provision proposed[4] in this respect requires that where, in a trial before the court of Session, the accused is not represented by a pleader, the court shall assign a pleader for his defence at the expense of the State. The State Government is given power to make this provision applicable in relation to any class of trials before other courts in the State. It may be noted that the provision in the Bill follows, in substance, the recommendation made by the previous Commission[5] on the subject.

26. We are of the view that defence of the indigent accused by a pleader assigned by the State should be made available to every person accused of an offence, i.e. in all criminal trials, so that mere poverty may not stand in the way of adequate defence in a proceeding which may result in the deprivation of liberty or property or loss of reputation.

In our view, representation by counsel is so basic an ingredient of a criminal trial, that the law should go as far as possible in seeking that this requirement is not absent.

The assistance of counsel is required at every step in the proceedings and irrespective of the nature of the offence under trial.

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1 Ovid. III, Amores viii, line 55, cited by Cappalleti and Gordley, "Legal Aid" (January, 1972) 28 Stanford Law Review 347.
2 Magna Carta, clause 40.
3 Cappalletti and Gordley, "Legal aid" (January, 1972) 24 Stanford Law Rev. 347, 363.
4 Cr. P. C. Bill, Clause 311.
5 41st Report, Vol. 1, pages 202-203, para. 24.34 to 24.39.

27. In making this recommendation,[1] we do not pause to consider the technical question whether a literal interpretation of the language of article 14 and 22(1) of the Constitution requires that the State should arrange for counsel in particular classes of cases. The philosophy underlying the Constitution, reflected in the provisions for equal protection of laws and in the chapter on directive principles, shows that the Constitution is inbued with respect for human rights. That philosophy is sufficient to furnish inspiration for a provision that will put an end to the individious discrimination that otherwise arises between person and person because of poverty. Where a poor man has to defend himself without counsel, there is lacking that equality which is demanded by the spirit of the Constitution. Denial to the indigent of the benefit of counsel's examination of the record, and marshalling of arguments on his behalf, is nothing less than denial of justice. "The indigent, where the record is unclear or the errors are hidden, has only, the right to a meaningless ritual."[2]

28. It is in this spirit that we are recommending a wide provision. We hope that legal practitioners will also appreciate the spirit in which we are making this recommendation, and will readily come forward to defend poor persons who cannot afford to pay. The scheme can be worked successfully if the members of the bar, including senior members, co-operate in its working.

Point (iv)—Sugeestions for improving the existing law contained in sections 161 and 162 relating to statements made to the police during investigation.

29. With reference to the law contained in existing sections 161 and 162 relating to statements made to the police during investigation, the Bill[3], broadly speaking, follows the recommendations made by the provious Commission[4]. Apparently, suggestions for improving the present law dealing with matters not considered in the previous Commission's Report, have been made. In the absence of details of those suggestions, we cannot express our views on the further change, if any, needed in the relevant sections.

Point (v)—Proposal to take away powers of revision against interlocutory orders.

30. The Bill[5] has a proposal to take away the powers of revision against interlocutory orders. No such amendment was recommended by the previous Commission[6]. We consider this change made in the Bill to be desirable one, and in general, we agree with the reasons given[7] in the Statement of Objects and Reasons in support thereof. We may also add that the power of the High Court under article 227 of the Constitution remains unaffected, and where the interlocutory order is important enough

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[1] As to legal aid in maintenance proceedings, see para. 63, **infra.**
[2] See **Douglas** v. **California,** (1963) 9 L. Ed. 2nd 811.
[3] Cr. P.C. Bill, clauses 164 and 165.
[4] 41st Report, Vol. 1, page 73, para. 14.13.
[5] Cr. P.C. Bill, Clause 407.
[6] 41st Report, Vol. 1, page 287, para. 32.8.
[7] Cr. P.C. Bill, Statement of Objects and Reasons, page 253, discussion relating to clauses 407 to 415.

to justify intervention by the High Court, the constitutional provision can be invoked.

Point (vi)—Provision for grant of anticipatory bail.

31. The Bill[1] introduces a provision for the grant of anticipatory bail. This is substantially in accordance with the recommendation made by the previous Commission[2]. We agree that this would be a useful addition, though we must add that it is in very exceptional cases that such a power should be exercised.

We are further of the view that in order to ensure that the provision is not put to abuse at the instance of unscrupulous petitioners, the final order should be made only after notice to the Public Prosecutor. The initial order should only be an interim one. Further, the relevant section should make it clear that the direction can be issued only for reasons to be recorded, and if the court is satisfied that such a direction is necessary in the interests of justice.

It will also be convenient to provide that notice of the interim order as well as of the final orders will be given to the Superintendent of Police forthwith.

Point (vii)—Question whether maintenance under section 488 can be provided for in respect of indigent parents.

32. Section 488 of the Code, dealing with maintenance, does not, at present cover indigent parents. Apparently, this question has been raised, though no proposal on the subject has been made in the Bill[3]. The point was considered by the previous Commission, but the Commission did not favour any amendment[4].

The Commission felt that it would not fit in with the scheme of the section, and also pointed out that in summary proceedings of the nature contemplated in section 488, it may be difficult to decide questions of the proportion of the amount to be paid by each child.

33. While we appreciate the difficulties pointed out in the earlier Report, we should emphasise that the object of section 488 (to prevent vagrancy) is relevant in this case also, and the need for an adequate remedy to check vagrancy in the case of parents cannot be reasonably disputed. The practical difficulties pointed out in the Report of the previous Commission should, we venture to suggest, not prove to be insurmountable. The principle of section 488 is essentially one of socialism, and ought to be given a wide scope. We therefore, recommend that the scope of section 488 should be expanded so as to authorise proceedings for the maintenance of indigent parents who are unable to maintain themselves. We do not enter into the detailed changes that will be necessary to achieve this object.

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1 Cr. P.C. Bill, clause 447.
2 41st Report, Vol. 1, pages 320—321, para. 39.9.
3 Cr. P.C. Bill, clause 128.
4 41st Report, Vol. 1, page 304, para. 36.4.

34. We may note that under the Hindu Adoptions and Maintenance Act[1], a Hindu is bound to maintain his or her aged or infirm parents so far as the parent is unable to maintain himself or herself out of his or her own earnings or other property.

Under the Muslim law[2] also, there is an obligation to maintain one's 'necessitous parents', if, one has the means, and this obligation rests in equal shares upon children of both sexes. Hence the proposed amendment will not cast any new obligation. We may add that the proposed amendment does not imply that the parents will have a right to separate maintenance. Whether there is sufficient reason for a claim for separate maintenance by the wife is even now determined by the Court, and the same will be the position as regards the right of the parents.

Point (viii)—Provision for filing written arguments.

35. The Bill has a provision for filing written arguments[3]. This matter was not raised before the previous Commission, but we agree that such a provision might be useful; though we should add that its utility as a measure for reducing delay should not be over-estimated. We should also like to add that the object of the proposed provision will be successfully achieved only if the Judges and the Bar co-operate in working the new provision in its true spirit.

Point (ix)—Suggestions for improvements in other respects with a view to curtail delays in investigation, trial or appeal.

36. One of the points referred to us is "suggestions for improvements in other respects with a view to curtail(ing) delays in investigation, trial or appeal". This is obviously a very wide issue, and we do not think it possible to make any well considered suggestion in this regard without a study in depth, and that is not possible within the short time available to us.

Additional points.

37. We shall now deal with a few points which, though not referred to us, appeared to us to be important and to require consideration.

Point (x)—Provision relating to "Appointment of Sessions Judges" and other officers.

38. Section 9 of the Code deals with the "appointment" of Sessions Judges. Having regard to a judgment of the Supreme Court on the subject[4], (relating to transfer of Sessions Judges) previous Commissions considered it necessary[5-6] to provide that the "appointment" of a Sessions Judge under section 9, which

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1 Section 20, Hindu Adoptions and Maintenance Act, 1956 (78 of 1956).
2 Tyabji, Muslim Law (1958), page 279, para. 330.
3 Cr. P.C. Bill, clause 321.
4 State of Assam v. Runga Muhamad, A.I.R. 1967 S.C. 903.
5 32nd Report of the Law Commission.
6 41st Report of the Law Commission, pages 19—20, para. 2.17 to 2.21.

really is not a first appointment to the cadre but is a process which may be called assignment to a particular court after appointment in the cadre,- should be done by the High Court, and not by the State Government as is required by the existing section 9(1). Though the judgment of the Supreme Court case related to the transfer of a Sessions Judge, the position as regards assignment of a person to a particular court of Session, would not be different, according to the view of two previous Commissions.

To achieve this object, a re-draft of section 9 was suggested in the previous Reports[1-2] and the Cr. P.C. Bill also, while accepting the recommendation in substance, seeks to replace section 9 by a new clause[3], which is as follows:—

> "9. (1) The State Government shall establish a court of Session for every sessions division.
>
> (2) Every court of Session shall be presided over by a Judge, to be appointed by the High Court.
>
> (3) The High Court may also appoint Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in a Court of Session.
>
> (4) The Sessions Judge of one sessions division may be appointed by the High Court to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in another division as the High Court may direct.
>
> [Sub-Clause (5) not material].
>
> *Explanation*:—In this section, and in sections 11, 12, 17 and 18, "appointment with its grammatical variations and cognate expressions means postings by the High Court after the first appointment of a person by the State Government to the cadre of Sessions Judge, Additional Sessions Judge, Assistant Sessions Judge, Judicial Magistrate or Metropolitan Megistrate, as the case may be."

The Explanation, it may be noted, did not occur in the draft suggested by the previous Commissions.

39. While we appreciate the reasoning behind the recommendations of the previous Commissions and with the substance of the relevant clause in the Bill, we have a suggestion to make with reference to the wording of the clause. In our view, the word "appoint" should, in this context, be avoided. The appointment, posting and transfer mentioned in article 233 of the Constitution are different from the appointment contemplated by section 9, and in order to maintain that distinction, it will be better to avoid the word "appoint".

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[1] 32nd Report, Appendix 2.
[2] 41st Report, Vol. 2, Clause 9.
[3] Clause 9, Cr. P.C. Bill.

We are of the view that in clause 9(1) of the Bill, the word "appoint" should not be used, but the word "assign" be used. The Explanation to clause 9 makes the same clarification, but we think that the word "appoint" should be avoided, as it is not desirable to use that word in a sense inconsistant with article 233. This will affect some other sections of the Code and also necessitate consequantial change in the Explanation to clause 9. Wherever the "appoint" in the Code occurs in the sense of assignment to a particular post, it should be modified as above.

Point (xi)—Design to commit an offence.

40. Under a provision of the Bill[1] corresponding to an existing section[2], a police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Since this power affects personal liberty and is exercisable by any police officer, there is, in our view, need for some safeguards. We recommend the following safeguards:—

(1) For arrest under this provision, reasons should be recorded by the police officer before arrest.

(2) If the matter is of urgency, reasons should be recorded immediately after arrest.

(3) In either case, the police officer should communicate the reasons to the Magistrate competent to try the offence.

Point (xii)—Admissibility of statements recorded by Magistrates.

41. Statements recorded by a Magistrate during investigation under the existing section 164, are not substantive evidence, obviously because the accused is not present, and has no right to cross-examination.

We are of the view that section 164 should provide that where the accused is present, he should have the right to cross-examination.

With such a provision, statements recorded under the section should be admissible at the trial subject to all just exceptions. In drafting the provision to be inserted, assistance could be taken from the present provision as to statements before the committing Magistrates[3].

Point (xiii)—abolition of Commitment proceedings.

42. The previous Commission recommended the abolition of commitment proceedings. The reasons for recommending

[1] Clause 154, Cr. P.C. Bill.
[2] Section 151, Cr. P.C.
[3] Section 288, Cr. P.C.

abolition, which weighed with the Commission, can be thus summarised:

(a) The main object of screening the material was not attained in practice[1-2].

(b) Changes made in England by the Criminal Justice Act of 1967[3], absence of commitment proceedings in the Scottish procedure[4], the procedure in Israel[5], and the procedure in some Australian Provinces[6], permitting proof by affidavits as a substitute for commitment, were noted. Committal proceedings were not essential for a fair trial[7], as was shown by the limited abolition of commitment in the countries mentioned above.

(c) In India also, committal proceedings had been dispensed with by law, in certain cases[8].

(d) There was no effective screening of flimsy cases[9], even under the present Code.

(e) Committal proceedings were not essential for giving the accused a clear picture of the case[10]. Such a picture could be obtained in a fair measure from the copies of papers supplied to the accused also.

43. This recommendation has been incorporated in the Bill. We wish to add that we agree with this recommendation. In addition to the reasons given by the previous Commission, we would like to add that in practice, as a result of judicial decisions on the subject, committing Magistrates do not and cannot judicially weigh the evidence produced before them, with the result that consideration of the question whether a *prima facie* case is made out for committing invariably tends to be mechanical rather than judicial.

We therefore express our concurrence with the recommendation to abolish commitment proceedings. We hope that as a result of this change the total period from the date of commencement of investigation to the completion of the trial before the Court of Session will not, ordinarily, exceed six months.

Point (xiv)—Examination of the accused.

44. In the Report on Social and Economic Offences, the Commission, having regard to the nature of offences under inquiry and the magnitude of the danger posed to the national

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1 41st Report, para. 18.19.
2 41st Report, page 142, para. 18.2.
3 41st Report, page 145, para. 18.8 and 18.9.
4 41st Report, page 146, para. 18.10.
5 41st Report, page 147, para. 18.11.
6 41st Report, page 147, para. 18.12.
7 41st Report, page 147, para. 18.13.
8 41st Report, page 147, para. 18.14.
9 41st Report, page 148, para. 18.16.
10 41st Report, page 149, para. 18.17.

economy, recommended the insertion of a provision on the following lines[1]:—

(1) In every trial for an offence under this Act, the Court shall, after the charge is framed,—

(a) direct the prosecution to furnish to the accused (or, where there are more accused than one, to each of them separately), a copy of the charge and of the documents upon which the prosecution proposes to rely and of which copies have not been already furnished to the accused, and

(b) for the purpose of ascertaining the case of the accused, call upon the accused to make a statement orally or in writing signed by him, touching upon all the facts set out in the charge and in the documents of which copies have been furnished to the accused:

Provided that where the court has dispensed with the personal attendance of the accused, the court may permit him to present a written statement signed by him through his pleader.

(2) No oath shall be administered to the accused when he is examined under sub-section (1).

(3) The accused shall not render himself liable to punishment by refusing to make such statement or by making a false statement.

(4) The statement made by the accused or the failure to make a statement on all or any of the matters referred to in sub-section (1) may be taken into consideration in such trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such statement may tend to show he has committed.

(5) Where the court has called upon the accused to make a statement under this section, the provisions of section 342 of the Code of Criminal Procedure, 1898, shall not apply, except as regards matters which, in the opinion of the court, had not been raised and communicated to the accused previously and in respect of which the accused should be allowed an opportunity to explain the circumstances appearing against.

(6) Where the accused has stated his case under this section, he shall not ordinarily be allowed to go beyond that case except with the leave of court.

It appears to us that such a provision should be extended to all trials. We may note that this is not a totally new approach,

[1] 47th Report (Social and Economic Offences), para. 9.20.

as even now the Code empowers the Court[1] to examine the accused before the commencement of evidence.

The comparative position in other countries on this point, and the possible constitutional objections and other related matters, were dealt with in our Report on Social and Economic Offences[2]. When considering the matter for the purposes of that Report, we were concerned with offences of anti-social nature or offences against the economy of the country. We have considered the question whether such a provision should be inserted for offences in general, and it appears to us that the provision which we proposed in that Report could, with advantage, be extended to all offences. Though the general run of offences may not present a danger of the same magnitude or nature as social and economic offences, it cannot be denied that the course of criminal trials could be made more smooth if the accused is required to disclose his case at the outset, and we do not think that this should cause any injustice or harassment to him.

Point (xv)—Sentencing.

45. It is now being increasingly recognised that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.

The aims of sentencing—themselves obscure—become all the more so in the absence of comprehensive information on which the correctional process is to operate. The public as well as the courts themselves are in the dark about judicial approach in this regard.

We are of the view that the taking of evidence as to the circumstances relevant to sentencing should be encouraged, and both the prosecution and the accused should be allowed to cooperate in the process.

The Bill does provide for hearing the accused as to sentence[3], but does not contain a specific provision as to evidence. But, in our opinion,—

(i) both the parties should be heard, as to sentence, and

(ii) and if a request is made in that behalf by either the prosecution or the accused, an opportunity for leading evidence on the question should be given.

We recommend accordingly.

We are aware that a provision for an opportunity to give

[1] Section 251-A(2), Cr. P.C.
[2] 47th Report, Paragraph 9.10 to 9.20.
[3] Cr. P.C. Bill, 1970, Clause 241(2) and Clause 256(2).

evidence in this respect may necessitate an adjournment; and to avoid delay, adjournment for the purpose should, ordinarily, be for not more than 14 days. It may be so provided in the relevant clause.

Point (xvi)—Consultation by Government with the Court before exercising powers of pardon etc.

46. Under the Constitution and under the Criminal Procedure Code, Government has got a power to grant pardons, to remit or commute sentence and various other powers of a similar nature. The question of requiring consultation with the Court before the exercise of these powers by the Government, has received our attention. We may refer in this connection to the present provision[1] *authorising* such consultation, though not requiring it and to the discussion in the previous Commission's Report[2], as to consultation before the grant of a free pardon.

47. It is our view that in order to avoid any appearance of arbitrary action, to remove any suspicions of political considerations and otherwise in the interests of justice, such consultation should, by a statutory provision, be made compulsory in the case of all powers exercised under the existing sections[3]. Of course, these sections do not affect the powers conferred by the Constitution, and the exercise of the constitutional powers cannot be legally regulated by a statutory procedure. But it is in our view desirable that the same practice should be adopted for exercising similar powers even under the Constitution.

Point (xvii)-acquittals. Appeals against

48. We have, next, to deal with appeals against acquittals[4]. There is an important point which, though not referred to us, requires, in our view, to be considered. The Report of the previous Commission[5] dealt with a few points relating to appeals against acquittals but did not suggest any radical modifications. In our view the matter requires further consideration.

49. Section 417 of the Code deals with appeals in case of acquittal. Sub-section (1) of the section gives the State Government an unrestricted right of appeal against any order of acquittal (whether original or appellate), and a similar right is given to the Central Government by sub-section (2) in cases investigated by the Delhi Special Police Establishment. Sub-section (3) permits a private complainant, in a case instituted on complaint, to appeal against the acquittal, but only after obtaining special leave from the High Court. In India, a Government appeal against an acquittal has been regarded[6] as "a necessary part of public policy".

50. It is true that the provision for appeals against acquittal

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[1] (a) Section 401(2), Cr. P.C.
(b) Clause 441(2), Cr.P.C. Bill.
[2] 41st Report, Vol. I, page 249, para. 284.
[3] Clause's' 441, 442, Cr. P.C. Bill.
[4] Clause 388, Cr. P.C. Bill, 1970.
[5] 41st Report, Vol. I, pages 262-263, para. 31.17.
[6] Emp. v. Sheo Janak, A.I.R. 1934 All. 27.31 (order of reference).

in appropriate case may be necessary to avoid miscarriage of justice.

But we are not convinced that it is in general desirable to encourage such appeals. The general theory is that in criminal proceedings the State should not recognize any interest except that of the public. To this theory, the Code recognizes a few exceptions, first, by requiring that in certain cases **only the person aggrieved** can initiate proceedings[1], and secondly, by permitting the complainant to appeal against an acquittal with special leave of the High Court.

51. The question to be considered is, whether the general and unlimited right conferred on the Government to file such appeal deserves to be retained. We must note that such a right is unusual, and is not found in most common law jurisdictions.

In most common law countries, the general rule is not to allow an appeal against acquittal. While a limited right of appeal against acquittal has been given in England in respect of an appellate judgement of acquittal, the general rule mentioned above is still adhered to. Under the Administration of Justice Act, 1960[2],—

> "Subject to the provisions of this section an appeal shall lie to the House of Lords, at the instance **of the defendant or the prosecutor,**
>
> (a) from any decision of a Divisional Court of the Queen's Bench Division in a Criminal Cause or matter;
>
> (b) from any decision of the Court of Criminal Appeal[3] on an appeal to that court."

It was, however, further enacted that no appeal should lie, except with the leave of the court below or of the House of Lords and that such leave shall not be granted unless it is certified by the court below, that a point of law of general public importance is involved in the decision and it appears to that court or to the House of Lords, as the case may be, that the point is one which ought to be considered by that House.

It has been stated[4] that the right to a further appeal in these cases is important for the general administration and development of the criminal law. Whereas an improper ruling by a trial judge will not bind other judges to follow the ruling, a wrong decision by an appellate court will affect the subsequent rulings of all lower courts; and without, a Crown appeal, a ruling against the Crown, if the trial judges abide by the rules of **stare decisis,**

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[1] Section 194 to 196 and 198 et sea Cr. P.C.
[2] Section 1, Administration of Justice Act, 1960 (Eng.).
[3] Now the Court of Appeal, Criminal Division.
[4] Friedland, Double Jeopardy, (1969), page 293.

cannot directly come before the Court of Criminal Appeal a second time for reconsideration.

52. Canada has introduced a provision[1] giving the right to appeal on a point of law to the Court of Appeal from an acquittal for an indictable offence[2]. Similar provision exists in New Zealand[3].

New South Wales (Australia) permits "moot appeals"[4].

The provision in Tasmania[5] is as follows:—

"(2) The Attorney General may appeal to the Court—

(a) against an order arresing judgment;

(b) by leave of the Court upon the certificate of the judge of the Court of trial that it is a fit case for appeal, against an acquittal on a question of law alone, or

(c) by leave of the Court, against the sentences."

As to this provision, Dixon C.J. observed[6]—

"It is evident that the policy which guided the legislature was rather concern in the application of criminal law than of correcting verdicts of acquittal to which the crown objected."

53. In some of the American jurisdictions, a limited right of appeal against an appellate order of acquittal is provided. For example, in the New York State[7], upon the determination of an appeal, by the appellate division or a country court, an appeal may be taken by any party aggrieved to the court of appeal in certain cases, provided such party obtains a certificate granting permission to appeal. One such case is appeal from a judgment or order affirming or reversing a judgment of conviction, including an order granting a new trial.

Connecticut allows an appeal to the State equal to that given to the accused. A statute in that State provides as follows[8].—

"Appeals from the rulings and decisions of superior

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1 Section 584, Canadian Criminal Code.
2 For working of the Canadian Section, see (1966) 9 Can. Bar Journal 168, 173.
3 Section 380—382, Crimes Act, 1961 (New Zealand).
4 Friedland, Double Jeopardy, (1969), pages 281 and 299.
5 Section 401(2), Criminal Code of Tesmania.
6 Vallance (1961) 35 A.L.J.R. 182, 183.
7 Hewitt (Editor) Administration of Criminal Justice in New York (1967), page 298.
8 Connecticut General Statutes, article 8312 (Revised 1949), cited in Mereland, Criminal Procedure (1959), page 278.

court or of the court of common pleas, upon all questions of law arising on the trial of criminal cases, may be taken by the State, with the permission of the presiding judge, to the Supreme Court of errors, in the same manner and to the same effect as if made by the accused."

54. The federal policy against a government appeal from an acquittal is almost as strong in the U.S.A. as in England. But the government can appeal to the Supreme Court from a federal appellate decision reversing a conviction[1].

55. In France, the Cr. P.C. provides[2]—

"Decrees of acquittal pronounced by the felony court may be made the object of a petition of review only in the interest of the law and without prejudice to the party acquitted."

56. An unlimited and general right given as in India in respect of appeals against acquittals is, thus, rare in the Anglo-American countries. It is for this reason that a re-examination of the subject appeared necessary. While one may grant that cases of unmerited acquittals do arise in practice, there must be some limit as to the nature of cases in which the right should be available. For, in our view, proper regard should be had to the need for putting reasonable limits on the period for which the anxiety and tension of a criminal prosecution should be allowed to torment the mind of the accused. There is a qualitative distinction between conviction and acquittal, and appeals against acquittals should not be allowed in the same unrestricted manner as appeals against convictions.

No doubt, guilty persons should be punished. But when a competent court, manned by trained judicial officer, has held a person to be innocent, the matter should ordinarily end there. The initial presumption of innocence is strengthened in such cases by a judicial verdict, and interference with that verdict should require special reasons.

57. With these considerations in view, we recommend that appeals against acquittals under section 417, even at the instance of the Central Government or the State Government, should be allowed only if the **High Court grants special leave.**

It may be pointed out that even now the High Court can summarily dismiss an appeal[3] against an ecquittal, or for that matter, any criminal appeal.

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[1] See—Foreman v. U.S., (1960) 361 U.S. 416; 4 & 5, L. Ed. 2d. 412, 419.

[2] Article 572, French Cr. P.C.

[3] Section 422, Cr. P.C.

Therefore, the amendment which we are recommending will not be so radical a departure as may appear at the first sight. It will place the State and the private complainant on an equal footing. Besides this, we ought to add that under section 422 of the Code, it is at present competent to the appellate court to dismiss the appeal both of the State and of complainant against acquittal at the preliminary hearing.

58. We should, however, make it clear that if the right of appeal against acquittal is itself retained, then the right to be given to a private party should not be abolished. And logically the law should cover cases not instituted on complaint. The right of a private party was introduced in 1955. And, though a recent Committee[1] has recommended its abolition in order to reduce the arrears in High Courts, we do not, with respect, share that approach. Extreme cases of manifest injustice, where the Government fails to act, and the party aggrieved has a strong feeling that the matter requires further consideration, should not, in our view, be left to the mercy of the Government. To inspire and maintain confidence in the administration of justice, the limited right of appeal with leave given to a private party should be retained, and should embrace cases initiated on private complaint or otherwise at the instance of an aggrieved person.

Point (xviii)-Limiting appeals under article 134 of the constitution.

59. In this connection, we may incidentally mention that in due course we propose to take up the question of limiting appeals to the Supreme Court under article 134 of the Constitution, on considerations similar to those which were dealt with in our Report relating to Civil Appeals[2] to the Supreme Court under article 133 of the Constitution.

Point (xix)-Maintenance—(Other points).

60. Regarding section 488 of the Code[3], which deals with the maintenance of wives and children[4] there are several points which we would like to discuss.

wife divorced extra judicially.

61. The first relates to the wife divorced extra-judicially.

At present, section 488 is confined to a wife or legitimate or illegitimate child unable to maintain herself or itself. A wife who has been divorced cannot proceed under this section. Where she is divorced extra judicially, this position causes hardship. Such women mostly become destitutes and their grievance needs immediate redress. We are of the view that where the divorce is effected extra-judicially, such right should be available to the wife until re-marriage, in order to prevent vagrancy and other evils which section 488 is designed to check. We have included extra-judicial divorce, because in such cases the divorced woman

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1 High Court Arrears Committee, Report (1972), Volume I, Chapter 5, para. 90.
2 45th Report.
3 Cr. P.C. Bill, clause 123.
4 See also para. 32 to 35, supra.

is unable to maintain herself, while, in case of a judicial divorce, alimony is provided for by an order of the Court.

It is not necessary to create a specific exception for cases where the divorce, though granted by the husband, was necessitated by the wife's fault. If, for example,—the ex-wife is staying with a paramour, the court will have a discretion to refuse maintenance[1].

We should also point out here that if our recommendation to extend section 488 to a wife divorced extra-judicially is accepted, it will be necessary to make a change in one clause of the Bill[2]. Clause 128(5) should be revised to read :

> "128(5). On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband.....[3] or that they are living separately by mutual consent, the Magistrate shall cancel the order."

Scope of section 488 to be extended to mother of illegitimate child and girl rendered pregnant.

62. One of the anomalies of section 488 is that while the mother of an illegitimate child is entitled to take proceedings for maintenance, **for the benefit of the child,** there is no independent right vested in her to take proceedings **for her own maintenance.** Moreover, a girl who has been seduced by a male and is subsequently left by the male cannot claim maintenance for herself, even if pregnancy follows. Such cases, fortunately rare so far, are bound to increase with growing urbanisation and changes in social structure. If there is justification for an illegitimate child being allowed to proceed under section 488, there is greater justification for allowing the seduced girl who has been rendered pregnant[4]. The additional condition that pregnancy must have followed is suggested mainly as an evidentiary safeguard. We therefore recommend that the scope of section 488 should be extended to the two cases mentioned just now, namely (i) mother of an illegitimate child and (ii) an unmarried girl with whom a male has had intercourse leading to pregnancy.

Legal aid in proceedings for maintenance.

63. It remains now to deal with the question of legal aid in proceedings under section 488. There is, in the section, no mention of the right to legal aid of the person claiming maintenance, and many deserving cases are left out simply because of want of counsel. Ordinarily, the opposite party is rich enough to engage a counsel, and the applicant has, therefore, to fight an uneven battle. Having regard to the beneficial object of section

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[1] See (a) Clause 128(4), Cr. P.C. Bill.
(b) Section 488(4), Cr.P.C.

[2] Clause 128(5), Cr. P.C. Bill, 1970.

[3] The words "**or that she has been lawfully divorced by her husband otherwise than by a decree or order of a Court having jurisdiction** in the matter" newly inserted by the Cr. P.C. Bill, 1970, should be deleted.

[4] The question of criminal liability is considered in 42nd Report (Penal Code), page 328, para. 20.23.

488—an object which seeks to introduce a modicum of socialism in the sphere of family law—it is desirable that legal aid should be available in proceedings under section 488. In order that such an amendment may not work to the disadvantage of an indigent respondent,—such a situation could be contemplated,—it will be necessary to extend the right to **legal aid to both parties to such proceedings.**

It may be noted that the Kerala rule[1] as to legal aid makes a specific provision covering such proceedings.

Point (xx) Cancellation of maintenance.

64. There is also a small point relating to cancellation of orders for maintenance[2].

There had been, in the past, some uncertainty as to whether the words of section 489(1) of the Code[3] are comprehensive enough to take in an application to cancel an order of maintenance on the ground of change of status of the party entitled to maintenance. The controversy arose in the context of divorce. The view that prevails at present seems to be, that the words "change in the circumstances" and "alteration in the allowance" are wide enough to take in, without doing violence to the language, "divorce" and "cancellation of allowance[4-5]."

We are not now concerned with extra-judicial divorce as such, since, according to our recommendation[6] (Paragraph 61), it should not now make a difference. But the wider question of change of status remains. We are of the view that such a power—i.e. power to cancel an order for maintenance on change of status—should be expressly provided for, in order to make the provision self-contained; and we, therefore, recommend that change of status of the person entitled to maintenance should be covered in the clause of the Bill corresponding to section 489.

Draft amendments not annexed.

65. This finishes consideration of the various points specifically referred to us, as well as of the points on which we considered it necessary to express our views **suo motu.** In view of the stage at which the matter stands[7], we are not annexing a draft of the amendments which will be required if our recommendations are accepted.

Summary of conclusions and recommendations.

66. Our conclusions and recommendations are summarised below:—

(i) The proposal to confer jurisdiction on the Central

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1 Rule 4, Kerala Legal Aid Rules, 1958.
2 (a) Section 489(2), Cr. P. C.
(b) Clause 130(2), Cr.P.C. Bill.
3 Clause 130(1), Cr. P.C. Bill.
4 (a) **Muhammad Ismail** v. **Sarammal,** A.I.R. 1960 Ker. 282 (Anna Chandy J.).
(b) **in re Muhammad Rahimullah** A,I.R. 1947 Mad, 461 (reviews cases)
5 Clause 128(5), Cr. P.C.
6 Para. 61, **Supra.**
7 Para. 1 to 4, **Supra.**

Bureau of Investigation to make investigation in respect of certain offences relating to matters in the Union List, is approved in principle. A recommendation is also made for the creation of Courts under Union Legislation for the trial of such offences[1].

(ii) Confessions made to police officers should be exempt from the bar imposed by sections 25 and 26 Evidence Act, if certain conditions are satisfied[2].

(iii) All accused persons must be furnished with counsel for their defence at the State expense[3].

(iv) As to improving the existing law contained in sections 161 and 162 of the Code of Criminal Procedure relating to statements made to the police during investigation, no further recommendations have been made[4].

(v) The proposal in the Bill to take away powers of revision against interlocutory orders is approved in principle[5].

(vi) The proposed provision for grant of anticipatory bail is accepted, with certain modifications requiring notice before the final order is passed and intimation to the police after passing the interim or final order[6].

(vii) Proceedings for maintenance under section 488 should cover claims of indigent parents[7] also[8].

(viii) The proposed provision for filing written arguments is approved in principle[9].

(ix) No further suggestions for improvements in other respects with a view to curtailing delays in investigation, trial or appeal are made, owing to the very limited time available[10].

(x) In the proposed provision as to the power of "appointment" of Sessions Judges and other officers, drafting changes are recommended[11].

(xi) The power to arrest a person for a design to commit offences should be coupled with certain safeguards, namely,

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1 Para. 5 to 7.
2 Para. 9 to 22.
3 Para. 23 to 28.
4 Para. 29.
5 Para. 30.
6 Para. 31.
7 Para. 32 to 34.
8 See also item (xix) below.
9 Para. 35.
10 Para. 36.
11 Para. 38—39.

the recording of reasons by the police officer and communication of the same to the nearest Magistrate[1].

(xii) Statements recorded by Magistrates during the course of investigation should be admissible, if the accused was present and had the right and opportunity to cross-examine the witness[2].

(xiii) Commitment proceedings should be abolished, as already recommended by the previous Commission[3].

(xiv) Examination of the accused to elicit his case is recommended, in all trials[4].

(xv) Both parties should be heard[5] as to the appropriate sentence to be passed, and should be given an opportunity to lead evidence on the subject.

(xvi) The Government should, before granting pardon, remission etc.[6] in respect of sentences, consult the Court by which the sentence was passed or confirmed.

(xvii) Appeals against acquittal, whether by the Government or by a private party, should be allowed only if the High Court grants special leave[7].

(xviii) Appeals under article 134 of the Constitution will be dealt with in a separate report[8].

(xix) (a) The scope of proceedings for maintenance, under section 488 should be expanded, so as to cover claim by a wife divorced extra-judicially and untill re-marriage[9]. Consequentially, clause 128(5) of the Cr.P.C. Bill, 1970, will also need modification[10].

(b) The section should also cover claims for maintenance by the mother of the illegitimate child or by an unmarried woman rendered pregnant[11].

(c) Legal aid should be provided in proceedings under this section[12].

(xx) Power of cancellation of an order for maintenance on a change in status, should be expressly provided for[13].

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1 Para. 40.
2 Para. 41.
3 Para. 42-43.
4 Para. 44.
5 Para. 45.
6 Para. 46-47.
7 Para. 48 to 58.
8 Para. 59.
9 Para. 61. See also item (iii), above.
10 To be carried out under clause 128(5), Cr. P.C. Bill, 1970.
11 para. 62.
12 Para. 63.
13 Para. 64.

Price :— *Inland—Re.* 0.70
Foreign—£ 0.08 *OR* 24 *Cents.*

PRINTED BY THE MANAGER, GOVT. OF INDIA PRESS, RING ROAD, NEW DELHI
AND PUBLISHED BY THE MANAGER OF PUBLICATIONS, DELHI-6, 1973